By Mr. HUDDLESTON: A bill (H.R. 3615) for the relief of Alexander Collins; to the Committee on Claims.

By Mr. KELLY of Pennsylvania: A bill (H.R. 3616) for the relief of Walter A. Zinkham; to the Committee on Claims.

Also, a bill (H.R. 3617) for the relief of H. Bluestone; to the Committee on Claims.

Also, a bill (H.R. 3618) granting a pension to Gertrude A. Foley; to the Committee on Pensions.

Also, a bill (H.R. 3619) granting a pension to James H. Riffle; to the Committee on Pensions.

Also, a bill (H.R. 3620) granting a pension to William B. Kuhn; to the Committee on Pensions.

Also, a bill (H.R. 3621) for the relief of John L. Friel; to the Committee on Claims.

Also, a bill (H.R. 3622) for the relief of L. A. Levin; to the Committee on Claims.

Also, a bill (H.R. 3623) for the relief of Walter P. King; to the Committee on Claims.

Also, a bill (H.R. 3624) for the relief of T. W. Mallonee; to the Committee on Claims.

Also, a bill (H.R. 3625) for the relief of Charlotte Lamby; to the Committee on Claims.

Also, a bill (H.R. 3626) for the relief of John M. Ruskai; to the Committee on Military Affairs.

Also, a bill (H.R. 3627) for the relief of Alexander Miller; to the Committee on Military Affairs.

Also, a bill (H.R. 3628) for the relief of L. D. Tracy; to the Committee on Claims.

Also, a bill (H.R. 3629) for the relief of Forrest D. Stout; to the Committee on Claims.

Also, a bill (H.R. 3630) for the relief of the estate of Benjamin Braznell; to the Committee on Claims.

Also, a bill (H.R. 3631) granting a pension to Ida L. Updegraff; to the Committee on Invalid Pensions.

Also, a bill (H.R. 3632) for the relief of Mary S. Neel; to the Committee on Claims.

Also, a bill (H.R. 3633) for the relief of John Buchanan; to the Committee on Military Affairs.

By Mr. KOCIALKOWSKI: A bill (H.R. 3634) to correct the naval record of Walter C. Schalk; to the Committee on Naval Affairs.

By Mr. LUDLOW: A bill (H.R. 3635) for the relief of James J. Laughlin; to the Committee on Claims.

By Mr. MARTIN of Massachusetts: A bill (H.R. 3636) for the relief of Thelma Lucy Rounds; to the Committee on Claims.

Also, a bill (H.R. 3637) for the relief of Edward Theroult, alias Frank Gamashe; to the Committee on Military Affairs.

Also, a bill (H.R. 3638) for the relief of Ernest F. Walker, alias George R. Walker; to the Committee on Military Affairs.

Also, a bill (H.R. 3639) for the relief of Manuel Ferreira; to the Committee on Claims.

Also, a bill (H.R. 3640) for the relief of Esther Fountain; to the Committee on Claims.

PETITIONS, ETC.

Under clause 1 of rule XXII,

69. Mr. LOZIER presented a petition of numerous citizens of Linn County, Mo., urging the passage of the Frazier farm mortgage refinance bill, which was referred to the Committee on Ways and Means.

SENATE

THURSDAY, MARCH 16, 1933

(Legislative day of Monday, Mar. 13, 1933)

The Senate met at 12 o'clock meridian, on the expiration of the recess.

Mr. ROBINSON of Arkansas. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Adams	Couzens	La Follette	Robinson, Ark.
Ashurst	Dale	Lewis	Robinson, Ind.
Austin	Dickinson	Logan	Russell
Bachman	Dieterich	Lonergan	Sheppard
Bailey	Dill	Long	Smith
Bankhead	Duffy	McCarran	Steiwer
Barbour	Fess	McGill	Stephens
Barkley	Fletcher	McKellar	Thomas, Okla.
Black	Frazier	McNary	Thomas, Utah
Bone	George	Metcalf	Townsend
Borah	Goldsborough	Murphy	Trammell
Bratton	Gore	Neely	Tydings
Brown	Hale	Norbeck	Vandenberg
Bulkley	Harrison	Norris	Van Nuys
Bulow	Hastings	Nye	Wagner
Byrd	Hatfield	Overton	Walcott
Capper	Hayden	Patterson	Walsh
Caraway	Hebert	Pittman	Wheeler
Clark	Johnson	Pope	White
Connally	Kean	Reed	
Copeland	Keyes	Reynolds	

Mr. NEELY. I desire to announce that the Senator from Colorado [Mr. COSTIGAN] is necessarily detained from the Senate by illness. I will let this announcement stand for the day.

Mr. BANKHEAD. I wish to announce that the junior Senator from South Carolina [Mr. BYRNES] is detained from the Senate by illness. I ask that this announcement may stand for the day.

Mr. LEWIS. I announce to the Senate that the junior Senator from California [Mr. MCADOO] is detained by a slight illness. This announcement I ask may stand for the day.

I also desire to announce that the Senator from Wyoming [Mr. KENDRICK] is necessarily detained from the Senate. This announcement likewise may stand for the day.

I also announce that the Senator from Virginia [Mr. GLASS] is detained by illness. This announcement also may stand for the day.

Mr. WALSH. I wish to announce that my colleague the junior Senator from Massachusetts [Mr. COOLIDGE] is detained on account of a death in his family. I will allow this announcement to stand for the day.

Mr. REED. My colleague the junior Senator from Pennsylvania [Mr. DAVIS] is necessarily detained from the Senate by reason of illness.

Mr. HEBERT. I desire to announce that the Senator from Wyoming [Mr. CAREY] is detained from the Senate, having been in attendance upon the funeral of the late Senator Howell, of Nebraska.

I also wish to announce that the senior Senator from Minnesota [Mr. SHIPSTEAD] and the junior Senator from Minnesota [Mr. SCHALL] are necessarily absent.

The VICE PRESIDENT. Eighty-two Senators having answered to their names, a quorum is present.

SENATOR FROM MONTANA

Mr. WHEELER presented the credentials of JOHN EDWARD ERICKSON, appointed a Senator from the State of Montana to fill the vacancy existing in the office by reason of the death of Thomas J. Walsh, which were ordered to be placed on file, and they were read, as follows:

In the name and by the authority of the State of Montana, to all to whom these presents shall come, greeting:

Know ye that I, F. H. Cooney, Governor of the State of Montana, reposing special faith and confidence in JOHN EDWARD ERICKSON, do hereby appoint the said JOHN EDWARD ERICKSON United States Senator from the State of Montana, and by virtue of the power vested in me by the Constitution and in pursuance of the laws I do hereby commission him, the said JOHN EDWARD ERICKSON, to be United States Senator from the State of Montana, hereby authorizing and empowering him to execute and discharge all and singular the duties appertaining to said office and to enjoy all the privileges and immunities thereof, filling the vacancy now existing in said office by reason of the death of Thomas J. Walsh.

In testimony whereof I have hereunto subscribed my name and caused the great seal of the State of Montana to be affixed at Helena, Mont., the 13th day of March A.D. 1933, and in the one hundred and fifty-seventh year of the independence of the United States of America.

F. H. COONEY.

By the governor:
[SEAL]

SAM W. MITCHELL,
Secretary of State.

FEDERAL GAME RESERVES IN NORTH DAKOTA

Mr. FRAZIER presented the following concurrent resolution of the Legislature of the State of North Dakota, which was referred to the Committee on Agriculture and Forestry:

House Concurrent Resolution 12 (Representative Louis Endres)

A resolution providing for the establishment of Federal game preserves on or near the Fort Berthold Indian Reservation, and on the Standing Rock Indian Reservation near Fort Yates

Be it resolved by the House of Representatives of the State of North Dakota (the senate concurring)—

Whereas there are at the present time thousands of acres of land in North Dakota which are not adapted to agricultural purposes, and which have little or no commercial value; and

Whereas deer, antelope, and other game animals are steadily decreasing in numbers due to the fact that they are not given sufficient protection; and

Whereas the people of North Dakota are interested in the preservation and perpetuation of these forms of native wild life: Now, therefore, be it

Resolved by the House of Representatives of the Twenty-third Legislative Assembly of the State of North Dakota (the senate concurring), That we hereby request the present Congress to pass the legislation necessary for the acquisition of land for Federal game reserves in North Dakota, and for the maintenance of such reserves on or near the Fort Berthold Indian Reservation and on the Standing Rock Indian Reservantion near Fort Yates.

MINNIE D. CRAIG,
Speaker of the House.
OLE H. OLSON,
President of the Senate.

BILLS AND JOINT RESOLUTIONS INTRODUCED

Bills and joint resolutions were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. AUSTIN:

A bill (S. 499) to amend section 337 of the Tariff Act of 1930; to the Committee on Finance.

By Mr. WALSH:

A bill (S. 500) for the relief of Lieut. Thomas O'C. McCarthy, United States Navy; to the Committee on Claims.

By Mr. GEORGE:

A bill (S. 501) to amend section 201 of the Emergency Relief and Construction Act of 1932 to provide for certain loans by the Reconstruction Finance Corporation to aid in the support and maintenance of public schools; to the Committee on Banking and Currency.

By Mr. TYDINGS:

A bill (S. 502) to provide revenue for the District of Columbia by the taxation of beverages, and for other purposes; to the Committee on the District of Columbia.

By Mr. METCALF:

A bill (S. 503) to confer jurisdiction on the Court of Claims to hear and determine the claim of A. C. Messler Co.; to the Committee on Claims.

By Mr. KEAN:

A bill (S. 504) to authorize the Secretary of the Navy to make a long-term contract for a supply of water to the United States Naval Station at Guantanamo Bay, Cuba; to the Committee on Naval Affairs.

By Mr. CLARK:

A bill (S. 505) for the relief of Michael Dalton; to the Committee on Claims.

By Mr. McKELLAR:

A bill (S. 506) conferring upon the President the power to reduce subsidies, and for other purposes; to the Committee on Post Offices and Post Roads.

(Mr. SMITH introduced Senate bill 507, which was referred to the Committee on Agriculture and Forestry, and appears under a separate heading.)

By Mr. BLACK:

A bill (S. 508) to further regulate mail contracts and salaries of individuals, companies, and corporations receiving Government subsidies and Government loans; to the Committee on Post Offices and Post Roads.

By Mr. FRAZIER:

A joint resolution (S.J.Res. 24) proposing an amendment to the Constitution of the United States prohibiting war; to the Committee on the Judiciary.

By Mr. CAPPER:

A joint resolution (S.J.Res. 25) proposing an amendment to the Constitution of the United States relative to taxes on certain incomes; to the Committee on the Judiciary.

HEARINGS BEFORE THE COMMITTEE ON PATENTS

Mr. WAGNER submitted the following resolution (S.Res. 31), which was referred to the Committee to Audit and Control the Contingent Expenses of the Senate:

Resolved, That the Committee on Patents, or any subcommittee thereof, is authorized, during the Seventy-third Congress, to send for persons, books, and papers, to administer oaths, and to employ a stenographer, at a cost not exceeding 25 cents per hundred words, to report such hearings as may be had on any subject before said committee, the expense thereof to be paid out of the contingent fund of the Senate; and that the committee, or any subcommittee thereof, may sit during any session or recess of the Senate.

TEMPORARY EMPLOYMENT OF MAIL CARRIERS

Mr. McKELLAR submitted the following resolution (S.Res. 32), which was referred to the Committee to Audit and Control the Contingent Expenses of the Senate:

Resolved, That the Sergeant at Arms hereby is authorized and directed to employ six mail carriers for service in the Senate post office for 7 days to be paid from the contingent fund of the Senate at the rate of $1,620 each per annum.

HEARINGS BEFORE THE COMMITTEE ON AGRICULTURE AND FORESTRY

Mr. SMITH submitted the following resolution (S.Res. 33), which was referred to the Committee to Audit and Control the Contingent Expenses of the Senate:

Resolved, That the Committee on Agriculture and Forestry, or any subcommittee thereof, is hereby authorized during the Seventy-third Congress to send for persons, books, and papers, to administer oaths, and to employ a stenographer, at a cost not exceeding 25 cents per hundred words, to report such hearings as may be had on any subject before said committee, the expense thereof to be paid from the contingent fund of the Senate; and that the committee, or any subcommittee thereof, may sit during any session or recess of the Senate.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Haltigan, one of its clerks, announced that the House had passed without amendment the following bills of the Senate:

S. 148. An act for the relief of Agnes M. Angle;

S. 149. An act for the relief of Daisy Anderson;

S. 150. An act for the relief of W. H. Hendrickson;

S. 151. An act for the relief of the Holy Family Hospital, St. Ignatius, Mont.;

S. 152. An act to authorize the Secretary of War to grant a right of way to the Alameda Belt Line across the Benton Field Military Reservation, Alameda, Calif.;

S. 153. An act to convey certain land in the county of Los Angeles, State of California;

S. 154. An act confirming the claim of Francis R. Sanchez, and for other purposes;

S. 155. An act for the relief of A. Y. Martin; and

S. 156. An act providing for an exchange of lands between the Colonial Realty Co. and the United States, and for other purposes.

AMENDMENT OF VOLSTEAD ACT

Mr. HARRISON. Mr. President, I move that the Senate proceed to the consideration of the bill (H.R. 3341) to provide revenue by the taxation of certain nonintoxicating liquor, and for other purposes.

The motion was agreed to; and the Senate proceeded to consider the bill, which had been reported from the Committee on Finance with amendments.

Mr. HARRISON. Mr. President, I want to make just a brief explanation of the bill. The bill seeks to amend the Volstead Act by fixing the alcoholic content of liquor at 3.2 percent instead of one-half of 1 percent. It will be recalled that during the last session the House passed a bill which came to the Senate and was reported out providing for an alcoholic content of 3.05 percent. The testimony before us and the discussions had by the committee lead us to believe there is practically no difference in that respect in the two bills.

Certain changes are made in the bill now before us as compared with the bill of the last session. In last year's bill the committee reported out a provision with reference to the sale to minors of beer of an alcoholic content of 3.05 percent. The sale of such beer to minors was prohibited. That provision is not in the pending bill. In the bill last year there was also a provision recommended to the Senate prohibiting the advertising in newspapers of beverages carrying that percentage of alcoholic content; indeed, prohibiting such advertising anywhere under any circumstances. The pending measure seeks to amend the present law on the theory that if an alcoholic content of 3.2 percent is not intoxicating, its sale to minors and its advertising should not be prohibited.

Mr. WALSH. Mr. President, will the Senator yield?

The VICE PRESIDENT. Does the Senator from Mississippi yield to the Senator from Massachusetts?

Mr. HARRISON. I yield.

Mr. WALSH. The difficulty with the House bill of last year was that it failed to repeal existing laws which prohibited advertising, while the bill which the Senator has reported and is now being considered by the Senate repeals such existing laws which, if they were not repealed, would forbid advertising of the character mentioned by the Senator from Mississippi.

Mr. HARRISON. It clarifies the situation to that extent.

The bill now before us lays a tax of $5 a barrel on beer and similar beverages. The Finance Committee has amended the bill as it passed the House by including "wine, similar fermented malt or vinous liquor, and fruit juice" carrying the same alcoholic content as is applicable to beer, ale, and so forth. It is estimated that the Treasury will be replenished by between $125,000,000 and $150,000,000 from such tax. It is estimated that the privilege taxes—I call them "privilege" taxes—which the brewers must pay will bring an additional $1,000,000. The bill imposes on each brewer a tax of $1,000 a year. That tax is applicable to each brewery, and as many breweries as a brewer may operate will bring to the Treasury just that many thousands of dollars in the form of a privilege tax. The bill furthermore imposes a tax of $50 per annum in the case of wholesale dealers handling beverages or liquors of the kind mentioned, and $25 in the case of retail dealers in wines and a $20 tax on retail dealers in beer.

Mr. VANDENBERG. Mr. President, will the Senator yield for a question?

The VICE PRESIDENT. Does the Senator from Mississippi yield to the Senator from Michigan?

Mr. HARRISON. I yield.

Mr. VANDENBERG. The Senator has referred to a tax of $1,000 which is to be assessed upon brewers. May I inquire of the Senator whether under the terms of the bill every so-called "home-brewer" is a brewer within the effect of the bill?

Mr. HARRISON. It does not apply to them.

Mr. VANDENBERG. May I invite the Senator's attention to the language at the bottom of page 2 which provides that every person who manufactures liquor containing one-half of 1 percent or more alcohol "shall be deemed a brewer"? What does that mean?

Mr. HARRISON. If the Senator will examine the language more carefully, he will see that in line 22 it is provided that "every person who manufactures fermented liquors of any name or description for sale." I invite the Senator's particular attention to the words "for sale."

Mr. VANDENBERG. I thank the Senator.

Mr. HARRISON. Mr. President, I think the matter has been so freely discussed that it is unnecessary for me to discuss it further. I am very hopeful that we will expedite the passage of the measure as quickly as possible and get this much revenue for the Treasury of the Government.

Mr. TYDINGS. Mr. President, will the Senator from Mississippi yield?

The VICE PRESIDENT. Does the Senator from Mississippi yield to the Senator from Maryland?

Mr. HARRISON. I yield to the Senator.

Mr. TYDINGS. The Senator from Mississippi knows that on yesterday I submitted an amendment to the pending bill which, if adopted, would permit the sale of beer in the District of Columbia under the terms of the proposed act. The Senator from Mississippi has asked me not to press that amendment because he does not want to delay the passage of the bill. I am reluctant to take that course, unless I may have reasonable assurance that if a separate bill is introduced it will be referred to the committee and reported promptly and may be considered at the present session of the Congress.

Mr. HARRISON. I may say to the Senator from Maryland that I have a great deal of sympathy with his purpose and intent. I have no doubt that he has a very admirable amendment dealing with the sale of these beverages in the District of Columbia, but naturally its consideration would provoke very long discussion. I think that we ought to go about the consideration of this measure in an orderly way and let the Committee on the District of Columbia handle the matter to which the Senator has referred and make its report. I want to assure the Senator that, so far as I am concerned, I shall help in every way to expedite the consideration of the amendment in the form of a separate bill applying to the District of Columbia.

I myself have an amendment which, under other circumstances, I should be very glad to offer to the pending bill. It is one of vital importance and deals with the revenue. I refer to the joint resolution continuing the gasoline tax for the next year, which was passed by the other House but was delayed in the Senate at the last session only because of the number of speeches, and so on. I am going to withhold even offering that amendment, in the hope that we may pass this bill today, get it over to the other House, and conclude the subject. So I hope the Senator from Maryland will not press his amendment.

Mr. TYDINGS. Mr. President, in view of what the Senator from Mississippi has said, and of similar statements from the Democratic leader, the only two Senators whom I have had an opportunity to consult, I shall not press the amendment at this time. May I say, however, that the amendment which I have offered permitting the sale in the District of Columbia of beverages of less than 3.2 of alcoholic content by weight, is so framed as to prevent beer being sold in so-called "saloons." It would permit the sale of beer in bona fide restaurants, and it would have permitted the sale of beer to homes, but beer could not have been sold to be consumed on the premises except in connection with bona fide hotels and restaurants.

The reason why I should like to press the amendment at this time was that I was impelled by the thought that if we could attach this amendment to the beer bill it would set up what I hoped would be a model act upon which the States and local communities could pattern their local legislation for the sale of beer within their own confines.

I think it is pretty nearly the sentiment of the Senate and of the country that, insofar as possible, we should prevent the return of the old saloon. Therefore, in company with a number of gentlemen who have devoted considerable thought to this subject, members of the Modification League and others, this bill was written in the hope that wherever beer might be sold it would be sold under such conditions that the old saloon as we knew it would not return, but there would be afforded ample opportunity to buy beer under proper circumstances. I hope Senators will read the amendment as it is set forth in the RECORD of today on page 414.

In view of what the Senator from Mississippi and also the Democratic leader have said, that they will help to have consideration at this session of a bill similar to the amendment, I shall reluctantly not offer the amendment at this time, but I hope that when the bill covering the same subject is placed on the calendar Senators will not object to its consideration, because, if they are fair, they will realize that I am now waiving my right to its consideration, and I hope no technical objections will be lodged against it when it comes up for consideration.

Mr. HARRISON. Mr. President, I ask unanimous consent that the committee amendments may be first considered.

The VICE PRESIDENT. Is there objection? The Chair hears none, and the clerk will report the first amendment.

The first amendment of the Committee on Finance was, on page 1, line 4, after the word "porter," to strike out "and other similar fermented liquor" and insert "wine, similar fermented malt or vinous liquor, and fruit juice," so as to read:

That (a) there shall be levied and collected on all beer, lager beer, ale, porter, wine, similar fermented malt or vinous liquor, and fruit juice, containing one-half of 1 percent or more of alcohol by volume, and not more than 3.2 percent of alcohol by weight, brewed or manufactured—

The VICE PRESIDENT. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. WAGNER. Mr. President, I should like to ask the Senator from Mississippi whether he would object to an amendment to the bill, on page 1, line 8, inserting the words "which are hereby declared to be nonintoxicating in fact"? In other words, to make a declaration by the Congress that a beverage with an alcoholic content of 3.2 percent or less as a matter of fact is nonintoxicating.

Mr. HARRISON. Mr. President, I am afraid that might weaken the bill and drive some Senators who want to support it into a position where they would not support it for various reasons, and so I hope the Senator will not press such an amendment.

Mr. WAGNER. I will not press the amendment; but, of course, by the passage of this bill by implication we do declare such beverages to be nonintoxicating.

Mr. HARRISON. Yes; and we do that in the title of the bill.

Mr. WAGNER. I thought it would simply be in the interest of clarity that such an amendment should be made.

Mr. DILL. Mr. President, I should like to say to the Senator from New York that I think there is a big difference between expressing——

Mr. NORRIS. Mr. President, who has the floor?

The VICE PRESIDENT. The Senator from New York has the floor.

Mr. DILL. Between prescribing a punishment for the sale of liquor of more than 3.2 percent and declaring that a beverage of that alcoholic content to be nonintoxicating in fact.

Mr. WAGNER. Let me say to the Senator that in this bill we are permitting the sale of beverages containing 3.2 percent or less and we cannot permit that under the eighteenth amendment unless the beverage is nonintoxicating. That is very definite and clear.

Mr. DILL. If there were no law on the subject at all we could not be permitting the sale of any liquor, but if somebody did sell it we would have our rights to secure an injunction against such action.

Mr. WAGNER. Except, I may say to the Senator, by our permitting it we do say, as a matter of fact, that the Congress has determined as a question of fact that beverages of such alcoholic content are not intoxicating. Of course, eventually it will be for the courts to determine whether or not Congress has acted arbitrarily or in violation of reason. I simply wanted to have declared definitely what we are declaring by implication in the proposed statute. However, if such an amendment would lead to controversy I shall not press it.

Mr. DILL. Mr. President, I think there is a vast difference, though, between punishing by specific legislative act and not passing any legislation at all providing for punishment in the case of the sale of liquors not exceeding 3.2 percent alcoholic content.

Mr. WAGNER. The Senator realizes that in this very bill we are providing for the sale of beverages of 3.2 percent or less alcoholic content, and we are authorizing the issuance of permits. That we could not do conscientiously unless we were of the opinion that beverages of an alcoholic content of 3.2 percent or less are nonintoxicating.

Mr. DILL. But the courts could still decide——

Mr. WAGNER. That we had violated the Constitution.

Mr. DILL. That we had violated the Constitution.

Mr. WAGNER. They can do so with this declaration.

Mr. SHEPPARD. Mr. President, there are certain facts in connection with this bill, as I see them, which, in my judgment, ought to be made a matter of record.

A prominent representative of the brewing industry stated at the House hearings on a bill similar to this in the last Congress that it would take 2 years and an expenditure of $360,000,000 to place that industry in position to produce half as much beer, in proportion to population, as was produced in 1914, the peak year of the business; in other words, according to his own calculation, to produce 40,000,000 barrels of beer in a year. He said that this amount would finally come from the consumer. It will be seen, therefore, that this measure will exact from the consumers of beer the cost of reestablishing the brewing industry, that is, $360,000,000 in 2 years; and it is reasonable to suppose another $360,000,000, roughly speaking, when the industry shall have become relatively as large as in former times, with continuous depreciation, interest, and repair charges. The investment in this industry in 1914 represented the sum of $800,000,000, in round numbers.

It will be seen further that the tax of $5 a barrel on beer which this bill imposes will be taking from beer consumers in 2 years, if the plans of its proponents are realized, $200,000,000 a year for Government revenue, and later, when the brewing industry shall have reached the equivalent in relation to population of its old proportions, $400,000,000 a year for that purpose.

Brewery representatives testified at the hearings that beer would sell at retail in glass and bottle at the rate of about $20 a barrel. This means that consumers will be paying an annual amount of $800,000,000 for beer in 2 years, and later $1,600,000,000, when the brewing industry shall have become as large in proportion to population as formerly.

Now note the picture: In order to secure $200,000,000 in taxes in 2 years a new industry is to be constructed, or an old industry is to be reconstructed, costing the masses of the people who will be the consumers of beer $800,000,000. Later, as I have indicated, it may be reasonably expected that these figures will be doubled. What a tribute to the brewers! In 2 years $600,000,000 a year for them and $200,000,000 for the Government, and later $1,200,000,000 for them and $400,000,000 for the Government, and all this coming from the pockets of the masses. What a desperate and tragic form of taxation!

In this last calculation I have not included the funds necessary to rebuild the brewing industry. These funds also will come from the people. I have based my statements on the estimates of the brewery representative at the congressional hearing.

It is true that Government experts forecast a revenue of about $125,000,000 to $150,000,000 at first. Taking that basis, my estimates and statements will apply in proportion.

The statement by the brewers, through their representatives, that it will take an expenditure of $360,000,000 and 2 years' time to place the brewing industry on a basis half as large as it was formerly gives the death blow to the argument that this bill is merely a transfer of an industry now illegally existing to a legal basis in order to secure taxes.

The principal consumers of beer will be the working masses of America, those who labor with their hands, and who comprise about 85 percent of the American people. To saddle the laboring millions of the Nation with the financial burden of reestablishing and maintaining a nonessential industry, not to say anything else about it, at the present time, would be an outrage and a crime. It would be a drain upon the earnings and savings of labor which would reduce its living conditions to a disastrous degree. It would fall with crushing effect upon the families and the homes of the manual toiler, upon the mother, the wife, the child.

It is said that the return of beer will mean the employment of hundreds of thousands of men. The answer is that

for every dollar spent for beer, a dollar less will be spent for food, shelter, clothing, education, medical service, "movies," radios, autos, travel, and other facilities and features of modern life. For every employee made possible by beer, an employee will be discharged from the industries producing these necessities and facilities.

We have by no means measured the entire cost of the restoration of the beer business. The mind of man cannot comprehend the figure which would represent that cost.

Think of the degraded standards of existence, the shattered morals, the disease, the crime, the fatalities, the poverty, the agonies which the annual consumption of the alcohol in a billion and a half dollars' worth of beer would bring to this Republic, and say, if you can, what group of numerals would adequately depict the loss.

The liquor problem is in the main a beer problem in the United States. The apparent innocence of a small alcoholic content causes beer to work the greatest havoc of all the alcoholic beverages, judging from the experience of America in preprohibition times. Beer and light wine gradually but surely establish the liquor habit. Beer, wine, and hard liquors, such as whisky and brandy, are but forms of the same habit-forming drug, ethyl alcohol. Hard liquor is a short cut to the point where beer and wine at last arrive.

The liquor curse which occasioned the movement for national prohibition was primarily a beer curse. Of the $900,000,000 expended for alcoholic liquor in the peak wet year of 1914, $800,000,000 was invested in beer. Of the $2,000,000,000 expended by consumers for alcoholic liquors in that year, over half was expended for beer.

The beer industry owned and operated most of the 177,000 saloons in preprohibition times—saloons devoted mostly to the sale of beer, centers of debauchery and corruption which prohibition was invoked to exterminate. The beer consumed before prohibition had an average alcoholic content of less than 3½ percent, according to a Government investigation made during the war—3½ percent by weight, only three tenths of 1 percent more than the alcoholic content by weight which this bill would permit, with the eighteenth amendment still in operation.

This bill will ultimately bring back the entire volume of the old-time liquor of the old-time bar, and the old-time saloon, brass rail, sawdust, and all. You may call the place where it is sold a drug store, a cold-drink stand, a filling station, a restaurant, or a hotel, but it will inevitably become the counterpart of the old-time saloon; and this is all to be brought about by the present bill, with the provision forbidding intoxicating liquor still in the Federal Constitution, which Senators and Representatives have sworn to uphold!

Nullification absolute! Repudiation complete! A congressional oath in tatters!

No ghastlier jest was ever attempted, in Congress or elsewhere, than the claim that beer with an alcoholic content of 3.2 percent by weight, or nearly 4 percent by volume, is nonintoxicating and therefore is permissible under the eighteenth amendment, which prohibits intoxicating liquors.

Dr. Howard A. Kelly, of the Johns Hopkins Medical School, has said that one half of 1 percent is the safe maximum limit for alcohol in beverages.

Dr. W. R. Miles, of Yale, one of the foremost students of alcohol, tells us that there is no question as to the toxic effect of 2.75 percent beer, a proportion distinctly lower than that allowed by this bill.

Dr. Harvey W. Wiley, the well-known food and drug expert, who devoted a lifetime to the study of alcoholic and other beverages, expressed the opinion that the Volstead Act—the act providing for the enforcement of the eighteenth amendment—might very properly have fixed a lower point for the intoxicating limit than one half of 1 percent; that for all practical purposes, however, the one half of 1 percent limit was as high a toleration of an intoxicating substance in beverages as Congress should have allowed.

Dr. Richard C. Cabot, a noted authority on alcoholic beverages, has said that anyone who knows anything about the habits of men has seen many get drunk on beer that contained 3 or 4 percent of alcohol.

Dr. William M. Hess, physiologist and psychologist, of Yale, testified at the House hearing on a bill similar to this in the last session that an alcoholic content of 2 percent and up in a beverage would slow down the reaction time of an average person two fifths of a second; that this means that if one is driving an automobile 40 to 60 miles an hour the decision to stop would be retarded two fifths of a second, and the machine would glide on 20 to 40 feet in that time; that this slowness of reaction would be the source of fatal accidents.

He referred to a number of authorities who had found, through experimental research, that beer produces intoxication in various stages, especially that most dangerous form of intoxication of which the person intoxicated is unaware. He quoted Dr. Hoppe, a nerve specialist and physician, of Koenigsberg, Germany, as saying that beer-drinking makes people silly, heavy, stupid, and dissolute; that it causes them to lose initiative and energy; that it destroys the power and buoyancy of the mind; that it blunts the higher feelings and interests; that it causes gradual surrender of ideals and aspirations; that it replaces enthusiasm and devotion with self-indulgence, boasting, and egotism; that these are the characteristics of the so-called moderate users of beer.

Dr. Hess quoted Bauer, Bollinger, and Sentner, of Munich, to the effect that beer increased the death rate; and he referred to Billy Sunday's statement that a powder mill in hell would be as easy to control as the licensed liquor traffic.

When national prohibition began, the Federal Government had already defined intoxicating liquor as liquor containing one half of 1 percent or more of alcohol. The war-time Prohibition Act of November 21, 1918, prohibited the use of fruit or other food materials in the production of beer, wine, or other intoxicating malt or vinous liquors for beverage purposes, but did not define intoxicating liquor. A definition being necessary for enforcement, the Government held in Treasury Decision 2788 of February 6, 1919, that within the intent of the war-time Prohibition Act of November 21, 1918, a beverage containing one half of 1 percent or more of alcohol by volume would be regarded as intoxicating.

Congress afterwards embodied this definition in the Volstead Act, the act enforcing national prohibition, which had become a part of the National Constitution through the adoption of the eighteenth amendment. This definition was attacked in the Supreme Court of the United States by that iron-willed, masterful beer baron, Colonel Ruppert, of New York, who employed some of the most powerful legal minds in the country, including Elihu Root and William Guthrie, to conduct the onslaught. The Supreme Court held both that Congress might reasonably have considered some legislative definition of intoxicating liquor to be essential to the effective enforcement of prohibition, and also that the definition provided by the Volstead Act was not an arbitrary one.

Later another effort was made by brilliant legal talent, employed by liquor interests, to upset this definition in the so-called "*National Prohibition Cases.*" The Supreme Court of the United States held in this litigation that while there were limits beyond which Congress could not go in considering beverages within its power of enforcement, it did not think those limits were transcended by the provisions of the Volstead Act wherein liquors containing as much as one half of 1 percent of alcohol by volume, and fit for use for beverage purposes, were treated as within that power. Thus the Supreme Court of the United States sustained Congress in defining intoxicating liquor in the Volstead Act as liquor containing one half of 1 percent of alcohol by volume, or a little more than four tenths of 1 percent by weight.

Let me interject here that alcohol by volume in a glass of beer means the part of the space in the glass occupied by alcohol as distinguished from the part of such space occupied by the remaining liquid. Alcohol by weight in a glass of beer means the part of the weight of all the liquor in the glass represented by alcohol as distinguished from the part of such weight represented by the remainder of the liquid.

In fixing the half of 1 percent minimum of alcohol for intoxicating liquors in the Volstead Act, Congress followed

not only the prior action of the Federal Government but the prior action of the legislatures of most of the States. According to Justice Brandeis, of the United States Supreme Court, a survey of State liquor laws in 1919 revealed that in 17 States the presence of any alcohol and in 18 States the presence of as much as or more than one half of 1 percent of alcohol in a beverage made it intoxicating.

Undoubtedly Congress had ample precedent and authority for the one half of 1 percent definition of intoxicating liquor. That definition represented the settled practice of the Nation and the States for a period of many years. Wet States used it for purposes of regulation and taxation. Dry States used it for purposes of prohibition.

Let us examine the matter further. The English word "intoxicate" is derived from the Latin word "intoxicare," which means to poison. The English word "toxic" has the same source, and denotes a poisonous effect. The eighteenth amendment, therefore, in prohibiting intoxicating liquors, prohibits liquors with a toxic or poisonous effect. Alcohol is a poison. An alcoholic beverage becomes intoxicating when it sets up a poisoning process or toxic condition in the human system. That process or condition resulting from alcohol may be in existence and exert evil effects without producing that form of alcoholic intoxication or poisoning popularly known as "drunkenness."

Alcoholic drinkers may be sufficiently under the influence of alcoholic poison—that is, may be sufficiently intoxicated—to become physical, intellectual, or moral menaces to society—to lose that control of physical, moral, and mental reactions on which civilization depends—without having reached that stage of alcoholic intoxication or poisoning showing outward signs and generally recognized as drunkenness. It is not necessary, therefore, for beer or any other alcoholic drink to produce what is regarded as drunkenness in order to constitute an intoxicant prohibited by the eighteenth amendment.

The so-called scientific experts called for the wets before Senate and House committees during the last Congress seemed to ignore this distinction. There is little to show that they did not have in mind perceptible drunkenness when they spoke of the amount of alcohol in a liquid which they deemed necessary to produce intoxication.

Dr. Yandell Henderson, professor of applied psychology at Yale, perhaps the leading wet expert before Senate and House committees on this question, in summarizing the famous British report of 1924 on alcohol and its effect on the human organism, seems also to have overlooked this distinction. He says in his preface to that report that, on the basis of the evidence which it had collected, the committee issuing that report concluded that intoxication occurred when a certain amount of alcohol was in the blood, an amount greater than the proportion provided in this bill, whereas the committee uses the word "drunkenness."

The committee's conclusion, as stated in the report, was that drunkenness was produced by an amount of alcohol in the blood equivalent to a one-thousandth part of the total amount of blood in the body, and made no reference to the other phases of intoxication or poisoning which may exist and persist without what is commonly known as "drunkenness."

The Senate Committee on the Judiciary embodied this entire British report in its report to the Senate at the last session on a bill similar to the pending bill, saying that it represented the most complete and scientific consideration and examination of the question of intoxicating liquors, and of the percentage of alcohol which produces intoxication, available.

This British report was prepared by a committee of eminent British scientists, and it was confined to the physiological effect of alcoholic beverages, giving no attention to social, psychological, and economic results. The closing paragraph of this report is to the effect that the temperate consumption of alcoholic liquors, in accordance with the rules laid down in the report, might be considered to be physiologically harmless in the case of the large majority of normal adults, that this conclusion is borne out by the massive experience of mankind in wine-drinking and beer-drinking countries; that, on the other hand, it is true that alcoholic beverages are in no way necessary to healthy life, that they are harmful or dangerous if the precautions prescribed in the report are not observed; that they are definitely injurious to children, and for most persons of unstable nervous systems, notably, for those who have received severe injuries of the head, or who have suffered from attacks of mental disorder or from nervous shock.

Observe that this final paragraph refers to all types of alcoholic liquor, including wine and beer by name. Remember that the beer legalized by this report is a prominent type of what is commonly known as "beer" the world over.

Observe that this concluding paragraph of the British report says that alcoholic liquors taken with certain precautions are physiologically harmless, that is, do not actually destroy tissue or disrupt organs, but does not say that they are psychologically harmless nor socially harmless nor economically harmless. Yet these latter phases comprise by far the greater part of the beverage alcohol problem.

Observe that this paragraph saying that alcoholic liquors, including wine and beer, even when taken with the precautions mentioned, may be physiologically harmless to a large majority of normal adults, admits that they may become physiologically harmful to numbers of normal adults, or to adults abnormal in any degree. The eighteenth amendment prohibits intoxicating liquors without regard to the number affected.

Observe that this paragraph declares that alcoholic beverages, including wine and beer, are in no way necessary to healthy life, but are harmful or dangerous without qualification as to numbers affected if the precautions laid down by the committee are not followed.

What are those precautions? The report says in a preceding paragraph that the moderate use of alcoholic beverages is physiologically permissible only so long as it conforms to the special conditions necessary to avoid the poison action of the drug; that these conditions are that such an interval should elapse between the times when alcoholic beverages are drunk as will prevent the persistent presence of deleterious amounts of drug in the body, and that to avoid direct injury to the mucous membrane of the stomach and to decrease the risk of inebriation alcohol should not be taken in concentrated form and without food. Who does not know that millions of human beings do not possess the will continually to observe these conditions when once in the grip of the liquor habit?

Observe that this paragraph states that alcoholic liquors, including wine and beer, without specifying alcoholic content, are definitely injurious to children. May anyone logically construe the eighteenth amendment, which forbids intoxicating liquor for beverage purposes, to permit liquors which intoxicate, or have a toxic effect on children only? Are not the 30,000,000 children in this Republic within the jurisdiction of the American Constitution? Is the Constitution of this Nation oblivious to the existence of its children?

Returning to the British report, which the Senate Judiciary Committee praised so lavishly, let it be said that Dr. Yandell Henderson in his preface to the report devises the argument by which the report is made to support the theory that 3.2 percent beer and less is nonintoxicating. He says that this report holds that, to be intoxicating, alcohol must reach an amount in the blood equal to a thousandth part of all the blood in the human system. I have already shown that the report had actual drunkenness in view, and not the toxic effects of smaller amounts which produce evils composing the major part of the modern liquor problem.

Dr. Henderson reasons that because, as he says, the human stomach cannot hold enough 3.2 percent beer, or beer with small alcoholic content, at one time to produce the 1 to 1,000 proportion before described in the blood, that because, as he again says, such amount of alcohol in the blood would considerably exceed any amount of 3.2 percent beer or less that

could be imbibed without very great exertion, within the course of several hours, such 3.2 percent beer, or beer with less alcoholic content, is nonintoxicating.

He does not take into account the fact that alcohol remains in the system in its natural state until oxidized away; that this oxidizing process is a gradual one; that successive quantities may be taken before prior quantities are consumed by the oxidizing process; that thus a volume of alcohol may be accumulated and perpetuated in the body without the necessity of drinking vast amounts at any one time or in a few hours.

Dr. Henderson cites the experiments of Dr. W. R. Miles, of Yale, in connection with the data in the British report as authority for his own conclusions. Dr. Miles has advised me since the publication by the Judiciary Committee of the British report with Dr. Henderson's preface that Dr. Henderson is right in stating that perhaps as much as 3 quarts of 3 percent beer would have to be taken by a man of average size to produce the 1 to 1,000 proportion of alcohol in his blood. He advised me further, however, that according to his own extensive experiments with beverages of 2.75 percent alcohol by weight, with Harvard medical students as subjects, he found that less than this amount in the blood 40 to 60 minutes after ingestion produced a definite evidence of toxic effect; that according to his experiments a man with an amount of alcohol in his blood equal to three thousandths of the total quantity of blood in his system showed from 5 to 20 percent decline in his efficiency in the various muscular and mental tasks; that this was shown by fully 80 per cent of the individuals examined; that the results led to the conclusion that " toxic " is a term that must be defined in relation to the intricacy or responsibility involved in the occupations or tasks at hand; that if a surgeon who planned operating on one of his children for a mastoid should voluntarily do something that would decrease his operating efficiency 20 percent he would consider him for the time being intoxicated and would protest his proceeding. Dr. Miles added that the 1 to 1,000 standard, which had gained a certain popularity as representing the lower limit for intoxication, had come from police-court findings and morgue statistics; that he preferred to rest his confidence in much more conservative results obtained by careful psychological experiments on the nonarrested living.

No surer indication of the fact that the toxic effect of an alcoholic beverage begins at an alcoholic content of one half of 1 percent may be had than the fact that the beer bill makes one half of 1 percent the minimum alcoholic content of the beer and other drinks it authorizes. The bill imposes a tax of $5 a barrel on beer, ale, porter, wine, and similar fermented malt or vinous liquor and fruit juice containing one half of 1 percent or more of alcohol by volume and not more than 3.2 percent by weight. It is well known that no ordinary nonintoxicating soft drink could stand a tax of that amount.

The imposition of such a tax shows that there is something more than a mere harmless nontoxic drink at the point in alcoholic content where the tax begins. It means that at the one half of 1 percent point the toxic lure, the habit-forming effect on which an $800,000,000 industry is proposed finally to be built, the potency of the poison which will finally drag $1,600,000,000 from the pockets of the people, begins to operate.

The fact that the same huge tax is placed on one half of 1 percent as on 3.2 percent shows that both percentages and intervening percentages are included in the toxic alcoholic range authorized by the bill. Of course, the bulk of the beer to be produced will consist of the higher percentages within this range. But does anyone suppose that the brewing industry, with a proposed capital investment finally approaching $800,000,000 and a proposed volume of business approaching $1,600,000,000, would be willing to take up this type and range of beer if it had no more effect on the human system than any ordinary nontoxic soft drink? And yet we are told that because one cannot get drunk on it at one sitting or within several hours it is nonintoxicating, and that it is permitted, therefore, by the eighteenth amendment, which prohibits intoxicating liquors.

It is said that beer is desirable as a food; and yet Baron Justus von Leibig, the great German chemist, states that it is now possible to demonstrate with mathematical certainty that, so far as enriching the blood is concerned, the flour that will lie on the point of a knife affords more nourishment than 4 measures of the best Bavarian beer; that anybody who drinks a measure of beer daily would thus imbibe in 1 year about as much nourishment as is contained in a pound of bread.

Let us enumerate some of the values that have come to us in the decade of prohibition extending from 1920 to 1930.

There was a decrease of 64 percent in the amount of liquor consumed before prohibition. A comprehensive Government study in 1930, accounting for every possible source of illicit liquor, showed a possible annual per capita consumption of a little more than 7 gallons in the event all these sources had been exploited. In 1914, the peak wet year before prohibition, the amount consumed was 22 gallons per capita.

There was a decrease of 38 out of 56 Keeley-cure institutions for alcoholics and an elimination of 60 out of 60 " Neal "-cure institutions for inebriates.

There was a decrease by thousands in the number of hospitals and sanitariums which once made provision for alcoholic cases. Only 101 now make any provision for alcoholic cases. Only 8, with 183 beds and an average of 80 patients, give exclusive treatment to drink victims. There was a decrease of from 10 to 60 percent in the number of children before juvenile courts, including informal as well as official cases.

There was a decrease of 54 percent in the number of children brought to child-welfare associations because of cruelty and neglect from drunken parents.

There was a decrease of 50 percent in arrests for prostitution.

There was a decrease of 11 percent in the number of 18- to 20-year-old males sent to penal institutions.

There was a gain of 30,000,000 depositors in savings banks and of $13,000,000,000 in savings. The savings banks were practically the only financial institutions in the country showing such gains at the end of the decade in the face of one of the most devastating economic crises the world has ever known.

There was a gain of $68,000,000,000 in life insurance.

There was a gain of 400,000 new homes.

There was a gain of 25 percent in wages.

There was a gain of 30 percent in the survival of infants under 1 year of age.

There was a gain of 42 percent in the survival of children under 5 years of age.

This bill, in restoring the brewing industry, will revive one of the most corrupting forces American Government and American history have ever known.

A few years before the advent of Nation-wide prohibition a subcommittee of the Senate Judiciary Committee, after a painstaking and thorough investigation, found, among other things, that the brewing and liquor interests of the country had furnished large sums of money for the purpose of secretly controlling newspapers and periodicals; that they had undertaken to and had frequently succeeded in controlling primaries, elections, and political organizations; that they had contributed enormous sums of money to political campaigns in violation of the Federal statutes and the statutes of several of the States; that they had exacted pledges from candidates for public office prior to elections; that for the purpose of influencing public opinion they had attempted and partly succeeded in subsidizing the public press; that they had created their own political organization in many States and in smaller political units for the purpose of carrying into effect their own political will and had financed the same with large contributions and assessments; that they had organized clubs, leagues, and corporations of various kinds for the purpose of secretly carrying on their

political activities, without having their interest known to the public; that they had improperly treated the funds they expended for political purposes as a proper expenditure for their business, and consequently failed to return the same for taxation under the revenue laws of the United States; that they had subsidized authors of recognized standing in literary circles to write articles of their selection for many standard periodicals; that for many years a working agreement existed between the brewing and distilling interests of the country, by the terms of which the brewing interests contributed two thirds and the distilling interests one third of the political expenditures made by the joint interests.

Nullification! Intoxication! Corruption! Such is the trio of evils symbolized and inflicted by this measure, a measure which, if perpetuated, will bring waste and woe to the generations now in existence and to generations yet unborn.

During the delivery of Mr. SHEPPARD's speech the following occurred:

Mr. LONG. Mr. President, I understand the Senator does not want to be interrupted, but I wonder whether I might interject the observation that eminent legal authorities disagree with him.

Mr. SHEPPARD. I know the Senator's humorous definition, and I would be delighted to have him read it, but I want it to be placed in the RECORD after my remarks.

Mr. LONG. Mine is law-book authority; it is not humorous.

Mr. SHEPPARD. I say, I shall be glad to have the Senator read it and let it appear in the RECORD. I should like to have some humor injected into the debate.

Mr. LONG. It differs so essentially from what the Senator is stating that I should like to have it appear in the RECORD:

> Not drunk is he who from the floor
> Can rise again and drink once more;
> But drunk is he who prostrate lies
> And from the floor can neither drink nor rise.
> —*North Carolina Law Review.*

Mr. SHEPPARD. Even law reviews can be humorous at times.

Mr. WALSH. Mr. President, in view of the inclusion by the amendment that has just been adopted by the Senate of a provision for the legalization of the manufacture of wine with an alcoholic content of 3.2 percent, I ask that there may be read at the desk two telegrams, which I send forward.

The PRESIDING OFFICER (Mr. VAN NUYS in the chair). Without objection, the clerk will read, as requested.

The Chief Clerk read as follows:

IRVINGTON, N.J., *March 15, 1933.*

Hon. DAVID I. WALSH,
United States Senate:

Assuming that the Senate will act on the beer bill, I urge the inclusion of other beverages than beer with a light alcoholic content limitation. By such a provision a substantial further tax revenue will be assured. Contrary to the opinion credited to certain Members of Congress, it is entirely practical to make a fine vinous beverage with an alcoholic content similar to that in the beer bill. Laboratories working under a Government permit have fully established this. There is a widespread practice among European winedrinkers to add carbonated water to wine, thus diluting it to a very low alcoholic content. It is perfectly feasible to do this commercially. A delicious, sparkling sauterne, which is much in demand for table use, can be made with 3 percent of alcohol by weight, and also sparkling Burgundy. A sparkling apple wine also can be made, and ginger beer with approximately 2 percent of alcohol is in extensive use in England and Canada.

In simple justice we ask avoidance of discrimination in the pending measure by permitting the manufacture and distribution of any beverage, providing its alcoholic content does not exceed that which shall be legal for beer. The Democratic platform and the message of President Roosevelt specifically include "other beverages than beer."

HOFFMAN BEVERAGE CO.

IRVINGTON, N.J., *March 16, 1933.*

Hon. DAVID I. WALSH,
Finance Committee, United States Senate:

Inclusion of wine in pending beer measure commendable. It is noted that winegrowers hold that wine of such low alcoholic content as 3.2 by weight is virtually impossible to make and if produced would be unpalatable. This contention is undoubtedly true as applied to wine produced by natural fermentation process. It is emphatically untrue of wine produced by compounding. It is a simple fact that delicious beverages of this type have been compounded in laboratories working under Government permit. Commercial production of light, sparkling wines of a type long popular in Europe entirely feasible. Incidentally winegrowers might find manufacturers of compound wine-type beverages no small outlet for their products. Certainly the inclusion of wine-type beverages in the beer bill subject to same alcoholic limitation as beer should in no wise prejudice any consideration the Congress may in due course give to the legalization of naturally fermented wines.

HOFFMAN BEVERAGE CO.

Mr. WALSH. Mr. President, in view of the concise and clear explanation of the terms of this bill which have been made by the Senator from Mississippi [Mr. HARRISON], it perhaps is unnecessary to say more or to amplify what he has already said. However, I have prepared a brief analysis of the bill, section by section, that I think might be helpful in enabling one without studying the text to understand the various features of the bill. I ask, rather than take the time of the Senate by an extended speech, that this analysis may be printed in the RECORD.

There being no objection, the analysis was ordered to be printed in the RECORD, as follows:

Section 1 imposes a tax of $5 per barrel of 31 gallons and a proportionate tax on fractional parts of a barrel on all beer, wine, and similar fermented liquors and fruit juices containing more than one half of 1 percent of alcohol by volume, and not more than 3.2 percent of alcohol by weight. The tax is to be collected under the provisions of existing laws. The section also imposes a tax of $1,000 on each brewery manufacturing the taxed product.

Section 2 repeals that portion of the National Prohibition Act which provides for the dealcoholization of beers and wines, but section 4 reenacts that provision in language fitting the new conditions.

Section 3 (a) provides that nothing in the National Prohibition Act shall apply to any of the beers, wines, and similar fermented liquors and fruit juices containing not more than 3.2 percent of alcohol by weight. This removes the products from all of the penalties of the National Prohibition Act and from all the provisions thereof.

Section 3 (b) amends the act covering the Territory of Hawaii, the act to provide for the civil government of Puerto Rico, and the act prohibiting the manufacture and sale of alcoholic liquors in the Territory of Alaska in conformity with the proposed law.

Section 3 (c) amends the so-called "Reed Act" so that mail matter containing advertisements or solicitations of orders for the product taxed by the bill may be sent through the mails, and this permits of the advertising in newspapers, magazines, and periodicals of the taxed product, even though such magazines, newspapers, and periodicals may have subscribers in States in which the sale of the product may not be legalized.

Section 4 (a) requires the manufacturer of the products taxed by the act to secure permits in the same manner as permits are secured under the National Prohibition Act for the manufacture of intoxicating liquor. This gives to the Federal administrative officers full power to supervise the character of those engaging in the business of manufacturing the taxed product. The section also prohibits the issuance of such permits if the manufacture of the product to be permitted thereby would be in violation of the law of the State, Territory, District, or political subdivision thereof where the manufacture is to be conducted.

Section 4 (b) (1) fixes the terms of the permit and provides that it may be issued for the manufacture of the taxed product of any alcoholic content conforming with the law of the State, Territory, or District where the manufacture is to be conducted, providing the said product does not contain more than 3.2 percent of alcohol by weight.

Section 4 (b) (2) is in effect the reenactment of the provisions of the National Prohibition Act regarding the dealcoholization, repealed by section 2, and sets up the mechanics for dealcoholization which would apply in those cases in which the beer to be manufactured contains less than one half of 1 percent of alcohol and may in certain cases be applicable to wine.

Section 4 (b) (3) puts the burden of proof on the manufacturer to show legality of his product where illegality is charged, and also provides for the inclusion of the expenses of analysis as part of the cost of the case.

Section 4 (c) imposes penalties in accordance with the present provisions of the National Prohibition Act for manufacture without a permit or for manufacture in violation of the terms of the permit.

Section 4 (d) gives the act the same geographic application as the National Prohibition Act has.

Section 5 again limits the product which may be sold under the permits covering manufacture to those containing not more than 3.2 percent of alcohol by weight.

Section 6 reenacts the so-called "Webb-Kenyon Act" as to the products taxed by this act and prohibits the shipment of those products in interstate commerce into States, Territories, or Districts of the United States if the product is to be received, possessed, sold, or in any manner used either in the original package or otherwise in violation of the law of the State, Territory, or District into which the shipment is made.

Section 7 imposes a penalty on those who cause the taxed product to be shipped into any State, Territory, or District, the laws of which prohibit the manufacture or sale therein of such products, and also provides for the revocation of any permit issued to such violators. The section also reenacts as to the products taxed the antishipping provisions of the so-called "Reed amendment".

Section 8 provides for the continued prosecution and enforcement as against any offense committed, or any right incurred, or any penalty or obligation incurred, or any seizure or forfeiture made prior to the effective date of the act.

Section 9 makes the act effective 15 days after the date of enactment to authorize the issuance of permits covering manufacture immediately upon the enactment of the act, and also authorizes the bottling of the taxed product for storage on the permit premises during the period following the enactment of the act and prior to its effective date. This makes possible the immediate collection of revenue on the passage of the act and enables the manufacturers to be in a position to make sales in bottles promptly on the effective date of the act.

Section 10 is the separability provision.

Mr. BORAH. Mr. President, I confess that I enter upon the discussion of this measure without adequate preparation. We have been, as is known, engaged in the consideration of other important legislation for the last several days, and we were in session last night until a late hour.

I have had no opportunity to arrange the material in such form as it should be arranged for the logical presentation of the views which I entertain. I may therefore not be as logical as one would like to be in presenting a question of such importance.

I have had only time to read the bill, and to ascertain, first, that it provides for 3.2 beer; secondly, that it makes no provision as to the places where the beer is to be sold and consumed—or, in other words, that it permits it to be drunk on the premises where sold. So far as the measure as presented goes, it leaves every opportunity to open the old drinking places, where congregate all people who are seeking not only drink but all the practices which accompany the old-fashioned saloon. No effort is made in the measure to control the sale in the interest of order and decency.

It is said that in dealing with the liquor question we are acting under a mandate from the people of the United States. A mandate is a device which relieves the legislator from doing any thinking for himself, from the exercise of his judgment, or the use of his conscience. So far as this particular measure is concerned, however, I am willing to argue it from the standpoint that we are acting under a mandate. I believe I can show the bill does not come within the terms of the mandate. The question then arises: What is the mandate under which we are acting and under which we propose to discharge our duties as Members of Congress?

It seems to me there has been considerable misapprehension as to what that mandate is. The portion of the mandate which seems conspicuous in the minds of those who are called upon to act is the repeal of the eighteenth amendment; but the conditions under which the repeal was to take place and the accompanying facts and conditions which should prevail and be considered have not been stressed.

There was a mandate quite as clear as that of repeal, relative to nonreturn of the saloon and, secondly, for the protection of the dry States. The latter proposition it is not necessary to discuss today. We undertook to take care of that when we were dealing with the repeal of the eighteenth amendment.

No one is better qualified to advise us as to what the mandate was, and what it was understood to be, than the distinguished gentleman who now occupies the presidential chair in the White House. I call attention to the views which he expressed and the pledges which he made to the American people, because we must accept them as a true construction of the mandate. We must conclude that every portion of his message to the people concerning this matter was considered by him and was considered by the voters as a part of the program relative to this question.

It will be recalled, in the first place, that the Democratic platform declared for the repeal of the eighteenth amendment; that the repeal was to be submitted to State conventions; that it declared against the return of the saloon; that it declared for the protection of the dry States; that it declared for the manufacture and sale of beer of such alcoholic content as is permissible under the Constitution—that is, nonintoxicating. The mandate relative to the saloon is not to be overlooked now that the election is over. That portion of the mandate which had to do with satisfying a certain class of voters should not be disregarded after the votes have been recorded. We must take the mandate in full; we must deal with it as a whole. No one would have dared to have gone into the last campaign silent or much less affirmatively for the saloon.

When I read the President's message to the Congress in which he referred again to the Constitution as a binding charter under which we are to observe and by the terms of which we are to be guided, my pleasure was so intense that it was almost painful. I am glad we are back to the Constitution, and I am pleased that the President calls our attention to the fact that in this matter we are to act within and under the terms of the Constitution; that we are not to pass any bill which in any way violates or impinges upon the Constitution of the United States. That part of the mandate, Mr. President, is the part which I want particularly to stress today.

Furthermore, during the campaign and previous to the campaign, the President made some declarations upon this subject. I quote from these declarations in order that we may understand the mandate under which we are acting, not with the idea of charging any change of attitude upon the part of the President or of implying any criticism of him, but for the purpose of getting the understanding which the Chief Magistrate had and has as to the program under which we are acting.

Prior to his nomination but while he was a candidate for the nomination he said:

I am positive in saying that there must be some definite assurance that by no possibility at any time or in any place can the saloon come back.

By no possibility, at any time or under any conditions, at any place or under any circumstances, shall that institution return to American life. I shall undertake to show that not only is the beverage which it is now proposed to legalize intoxicating but that no conditions are imposed which will prevent the return of the institution which has not only been condemned by the President but has been condemned by every right-thinking man and wholesome woman in the whole country.

The Senator from New York [Mr. WAGNER] also said before the last Democratic convention:

The saloon shall not return.

In his New Jersey speech, in which he was answering Mr. Hoover, who had put an interpretation upon the Democratic platform which was not satisfactory to the Democratic candidate, the distinguished candidate of that party said:

However we may differ as to methods, we all agree that temperance is one of the cardinal virtues. In dealing with the great social problems in my State, such as the care of the wards of the State and in combating crime, I have had to consider most earnestly this question of temperance. It is bound up with crime, with insanity, and, only too often, with poverty. It is increasingly apparent that the intemperate use of intoxicants has no place in this new mechanized civilization of ours.

That, Mr. President, is as true as Holy Writ. Intemperance has no place and can have no place in the civilization which we now enjoy; and so declared the President of the United States. It is at war with social welfare, it is in conflict with the effective use of modern inventions.

In our industry, in our recreation, on our highways a drunken man is more than an objectionable companion—he is a peril to the rest of us. The hand that controls the machinery of our factories, that holds the steering wheel of our automobiles, and the brains that guide the course of finance and industry should alike be free from the effects of overindulgence in alcohol.

No one who is interested in preserving our civilization can find fault with that statement. I drew the conclusion, when I read that speech, that the President of the United States, at heart, was opposed to the liquor traffic; and that the

only question which he was considering was how best to deal with it. I gave him entire credit at the time for sincerity upon that proposition, not only by reason of the statement he made but by reason of his previous views often expressed before the tormenting question of the repeal of the eighteenth amendment arose.

Again he said:

His statement proceeds deliberately to misrepresent the position of the Democratic Party. He says: "Our opponents pledge the members of their party to destroy every vestige of constitutional and effective Federal control of the traffic."

I have the right to assume that the President read the Democratic platform and on that assumption I charge that this statement was made to mislead the people of this country, and I assert that a mere reading of the plain, unequivocal provisions of the Democratic platform will sustain that charge. So that there can be no possible misunderstanding, let me read the provisions of the Democratic platform on this point.

I need not repeat that platform.

Thus the Democratic platform expressly and unequivocally opposes the return of the saloon and with equal emphasis it demands that there be Federal control of the liquor traffic to protect dry States. Only on the theory of seeking to return to power by the mere use of words can such statements of the President of these United States be explained.

In other words, the Democratic platform, as construed by the candidate and its terms defined, and the Democratic Party, were opposed to the return of the saloon. That pledge was made in the midst of a heated campaign, when they were seeking the suffrages of the people. If it can be shown that this bill deals with a nonintoxicating beverage, I admit the right to pass it, and I should not for a moment interpose even time against its passage. I have no objection whatever to the sale of nonintoxicating beverages; but so long as the eighteenth amendment stands, so long as it is a part of the Constitution, to sell intoxicating beverages and permit them to be drunk upon the premises is in violation of the Constitution and the mandate—a nullification of the charter under which we live—and it is that question in which I am primarily interested. I believe the bill is an attempt to nullify the Constitution. There is in all the literature of a constitutional republic no uglier crime than nullification. It is the stiletto that goes to the very heart of the constitutional government.

I may say that ever since the adoption of the eighteenth amendment the liquor question has been largely a governmental question with me. I have not felt that the eighteenth amendment ought to be disregarded so long as it is a part of the Constitution. The question of preserving the integrity of the Constitution is of very great moment.

Mr. President, I do not want to end my remarks about the saloon with the mere statement of the position of the party. I want to recall to the Senate and to the country some facts concerning the old saloon.

It was the most hideous institution with which organized society ever had to deal. It demoralized everything it touched; and the ingenuity of man never conceived a statute or a law which could control its lawlessness. It was the source of all wickedness. We ought not to be less than vigilant every hour to see that it does not return in any shape or form. We should accept the doctrine announced by the present President of the United States that under no circumstances or conditions shall it be permitted to return. I do not want connivance at its return nor silence when it is attempting to return.

Let me quote the words of another distinguished member of the Roosevelt family, who occupied the White House for a number of years and was a great President. He said at one time, I think when he was police commissioner of New York:

The officers of the law and the saloonkeepers became inextricably tangled in crime and connivance at crime. The most powerful saloonkeepers controlled the politicians and the police, while the latter in turn terrorized and blackmailed all the other saloonkeepers.

Mr. President, there was a time in this country when it was literally true that a man aspiring to public office, even if it was no higher than that of a member of the educational board of the community, had to go and bow to the saloon in order that he might realize his aspiration for the place.

There was a time in this country when that institution sat in the pews of some of the churches and checked up on the message which the divine was giving to the people, to see whether or not it would influence public opinion against the saloon.

There was no line of activity, there was no conduct relating to public affairs, over which the saloon did not drag its slimy coils. It was rotting out the very pillars of our civilization; and while the eighteenth amendment has become unpopular and may pass out, there is one thing for which it must be given credit, and that is that it put an end to that institution. It was the Federal Government which wrote the final verdict of death against that institution. I shall never be silent when it is making any attempt to return.

Years ago the Kansas City Star carried the following item:

The headquarters of the local Republicans is at Charlie Schattner's saloon, Twelfth near Main. The McGee's addition contingent, however, meets at "Joe and Charley's" saloon, Fifteenth and Grand. The city Democracy met for a long time at John Eichenauer's saloon, 812 Main Street, but now it usually foregathers at "Andy" Foley's saloon, Main Street near Fourth.

[Laughter.]

That seems at this time an exaggeration; but it recalls facts which every Senator here will recall who lived through those days. Such things were the usual things.

The Chicago Tribune in June 1914, said:

A 3 months' survey showed that 14,000 women and girls frequented, every 24 hours, the back rooms of the saloons on Madison and North Clark Streets and Cottage Grove Avenue.

Mr. President, there has been left out of this bill the provision which I caused to be inserted when it was here before, that no minor girls or boys should be permitted to visit these drinking places. At these places now to be opened, where the so-called nonintoxicating beverage may be drunk together with the intoxicating—because it will be—the Congress of the United States is about ready to say that it may be sold to minors, and invite the girls and boys to these rendezvous.

Here may I read a statement from the distinguished Senator from Virginia [Mr. GLASS], who, I regret, on account of illness, is unable to be here. He defined this institution well the other day:

The intemperance of the saloon—

Said Senator GLASS—

was the least objection to it. It was the breeding place of crime and immorality and vulgarity and profanity of every description. It was the rendezvous of the immoral and criminal element. Its effrontery was unparalleled.

It does seem to me that we ought to be willing to say by an amendment to this bill—although amendments are not popular in these days—that the place where this beer is to be drunk shall not be visited by the young people, the girls and boys of this country, because, whether it is intoxicating or not intoxicating to the adult, there is not an expert to be found anywhere who has ever to my knowledge opened his lips upon this question who will not tell you that it is intoxicating to boys and girls of tender years; and associated with the drinking is the environment, which is to be avoided equally with the drinking.

It is said by some that the saloon is preferable to the speak-easy. The trouble of it is that we are going to have both the saloon and the speak-easy. Speak-easies were almost as numerous during the saloon days as they are now.

The New York Tribune in 1911 reported that there were 5,000 speak-easies in the city of New York.

The Minneapolis Journal in 1908 said there were 4,000 speak-easies in Minneapolis.

The Pittsburgh Leader in 1896 reported the existence of a thousand speak-easies in Scranton.

The Cleveland Free Press in 1915 reported more than 1,500 such places in Cleveland.

There were almost as many speak-easies before prohibition as it is claimed there are now, and what will the place of sale become if the sale of the beverage covered by the bill is permitted? If the beverage which is permitted by law is not intoxicating, the intoxicating beverage will be close at hand.

The vice commission of Chicago, a commission appointed by the mayor and city council of Chicago in the year 1911, said:

> In the commission's consideration and investigation of the social evil it found as the most conspicuous and important element in connection with the same, next to the house of prostitution itself, was the saloon; and the most important financial interest next to the business of prostitution was the liquor interest. As a contributory influence to immorality and the business of prostitution there is no interest so dangerous and so powerful in the city of Chicago.

Jane Addams, about as nearly a saint as we find on this earth, said:

> In the winter of 1911 the Juvenile Protective Association of Chicago made a very careful investigation of 328 public dance halls, and found that 86,000 people frequented them on a Saturday evening, of whom the majority were boys between the ages of 16 and 18 and girls between 14 and 16. * * * One condition they found to be general; most of the dance halls existed for the sale of liquor, and dancing was of secondary importance; 190 halls had saloons opening into them; liquor was sold in 240 out of 328; and in the others, except in rare instances, return checks were given to facilitate the use of the neighboring saloons. At the halls where liquor was sold, by 12 o'clock practically all the boys, who in many halls outnumbered the girls, showed signs of intoxication.

I call attention to that, Mr. President, to show the ramifications, the connections, the relationship, of these drinking practices to all the other practices which naturally grow up around and about them.

The Chicago Tribune in 1911 said:

> If the secret records of the brewing and distilling industries were ever brought to light, they would tell a story of social and political corruption unequaled in the annals of our history. If the veritable narrative of the American saloon were ever written, it would make the decadence of Rome look like an age of pristine purity in comparison.
>
> Whisky, wine, and beer never caused half as much injury to society as the manufacturers and purveyors of these beverages. If these men have not made a practice of committing murder and arson, it is because these crimes did not seem immediately profitable. The liquor business has been the faithful ally of every vicious element in American life. It has protected criminals; it has fostered the social evil; and it has bribed politicians, juries, and legislatures.
>
> The inherent corruption has extended even to the so-called decent saloons. There are few that do not serve adulterated products, and it is an unusual proprietor that is not more pleased when his patrons are getting drunk than when they keep sober. Philip drunk stays longer and spends more money than Philip sober. That is one reason the saloon would rather sell ardent spirits than beer; they are more intoxicating.

With these brief references to the old institution, let us make every honest effort and every practical effort to see that it does not return in any form or under any guise, to see that no institution is set up which can encourage the drinking of intoxicating beverages, either in the place where it is legal to drink them or when nonintoxicating beverages sold are closely associated therewith.

Conceding for the sake of the argument that this beer permitted under this bill is technically nonintoxicating, nevertheless where it is sold intoxicating liquor, malt and spirituous, will be sold. It will be a saloon, with all the demoralizing forces of the old saloon present and active and uncontrollable.

Mr. President, the question is whether the beverage provided in the pending bill is intoxicating. There is no question about the fact that there is no provision against the saloon. There is no question that there would be no protection against the beverage being drunk upon the premises where sold. There is no question that the bill wholly fails to deal with that question. Therefore, if we find that the beverage is intoxicating or if we find that it would create a condition which would under cover permit the sale of intoxicating liquors, in my opinion it would be in violation of the Constitution.

Let us bear in mind that when the original bill was introduced in the House of Representatives, and when it was first urged, it did not propose any higher alcoholic content than 2.75 percent. The original measure introduced in the previous House, and which finally ripened into the bill which was passed in the previous House, the bill which was passed providing for the same content as the pending bill, called for only 2.75 percent beer.

I call attention to a fact. The House was not entertaining the idea of any beverage containing more than 2.75 percent of alcohol. The distinguished lawyer representing the brewery interests of the United States gave out a public statement in which he said the brewing interests were not satisfied with 2.75 percent, that they wanted 3.2 percent, and would insist upon it. Why? Because 3.2 percent would enable them to compete successfully with the speak-easies or the bootleggers who would sell intoxicating beverages, and if they had less than 3.2 beverages, they would not be able to pull the business away from the bootleggers. How can you compete with intoxicating beer except with intoxicating beer?

Does anyone believe the Government will collect $150,000,000 or $250,000,000 in taxes on a nonintoxicating beverage? Why did the breweries want 3.2 percent instead of 2.75 per cent, except for the simple reason that the former was sufficiently intoxicating, had a sufficient alcoholic content, to enable them to compete with those selling intoxicating liquors? So the bill was changed, and the alcoholic content which now is provided for in the pending bill was the exact content which was demanded by the brewing interests of the United States.

I quote a dispatch under date of November 26 from Chicago:

> A drive upon Congress, aimed at modification of the Volstead Act to provide for legalization of nonintoxicating beer with alcoholic content of 2.75 percent by weight, was opened today by the Associated Producers of Cereal Beverages, an organization of nearbeer manufacturers representing an investment of $250,000,000.
>
> Letters containing this recommendation were mailed to every Senator and Representative by William L. Goetz, president of Associated Producers. At the same time he issued a statement saying that his organization was opposed to the "high-powered" 4-percent beer recommended by Busch.
>
> In a letter to Congress Mr. Goetz urged that the new act be so framed as "to discourage the illicit manufacturer and the bootlegger and guarantee a pure and healthful nonintoxicating beer."

This association asked for a content not higher than 2.75 percent, because they were of the opinion that that could be maintained under the Constitution and would be held legal. But Mr. Busch, the representative of the brewing interests, insisted upon the content which is now found in the pending bill, and he stated in his testimony why. His attorney stated to the committee that if they got 3.2 percent beer they need not be uneasy; it would be satisfactory and sufficient; and that they would not need to go to bootleggers and other people in order to get an intoxicating beverage. The testimony shows that those who were advocating 3.2 percent were of the opinion that it would enable them to compete with those who were selling intoxicating beverages.

Let us look at the alcoholic content in intoxicating beverages in other countries.

German beers for export purposes have an alcoholic content of 4 percent. German beers for domestic purposes have an alcoholic content, by weight, of 3 percent. The content of German beer used in Germany is a less percentage than is proposed to be legalized here for a nonintoxicating beverage.

English beers for domestic purposes have an alcoholic content of 3 percent by weight.

I have examined at some length the data as to the alcoholic content of beers of different countries, and I have been unable to find any country where beer has a content higher than is found in the pending bill—that is, where the beer is for domestic purposes. So far as domestic use is concerned

the beer has a content in all the countries, so far as I know, of either 3 percent or less than 3 percent.

Mr. Busch, in writing upon this matter to the hotel managers, said:

However, in the meantime unless a beer of at least 3.2 by weight, which is 4 percent volume, is authorized, I am convinced the expected results will not be achieved and that the hoped-for returns will be disappointing to all interests depending upon the relegalization and the success of this product as an aid to their business. The hotels, exerting as they do the great amount of influence, could be of inestimable help by lending their good support to the movement for 4 percent by volume, 3.2 by weight, which would again enable the brewing industry to offer to the consuming public the same brand of beer of preprohibition days for wholesomeness and as appetizing.

In other words, Mr. Busch said that the content which we have now provided will enable them to return to the beverage which they were selling prior to prohibition, which everybody knows was an intoxicating beverage. I admit that after long experience and many years we cannot get enough beer into some people to make them intoxicated. [Laughter.] I am not concerned at all about those people. No particular good to society would be served by keeping them here any considerable length of time. I am speaking of those who are to be hereafter made acquainted with the drinking of beer, particularly the young people of the country. I venture to say that it will be found the content here provided for is such as has been regarded prior to prohibition days as an intoxicating beverage.

We are confidently looking forward to begin producing the old-time Anheuser-Busch products, among them Budweiser, long recognized as exemplifying the finest in bottled beer.

With my personal good wishes for the future success of your hotel and the hope that we may soon have the privilege of serving the quality of preprohibition days and the products of the house of Anheuser-Busch to you and through you to your guests and the traveling public, I remain,

——— BUSCH.

Mr. President, you may call all the experts you desire, you may bring in your professors and you may theorize, but Mr. Busch knows his business. He knows what has intoxicated and what will intoxicate again. Mr. Busch is satisfied with this content. I could end my argument upon that proposition here and now. Busch's testimony is full, complete, and of the most convincing authenticity.

Mr. Busch has said that it was necessary to have this content, because that is the content which the bootlegger would sell, and if it was not as good as the bootlegger's, if it did not have the same "kick," to use an unpoetical phrase, he could not hold his own with the bootlegger.

In another statement which was issued by this distinguished expert he said:

In my humble opinion, to legalize beer of 2.75 would be equivalent to placing the breweries in a position of offering a substitute, and I feel confident this percentage would not alone prove a disappointment as to additional employment and as to revenue, but would be rejected by the masses of our people who want and are demanding a beer in all respects satisfying and that will, so they say, furnish the warmth, the satisfaction, and contentment that a stimulant such as wholesome beer does.

Again said Mr. Busch:

A point of equal importance to which I would also invite attention is the necessity, if institutions like ours are to successfully reestablish themselves and reclaim their positions in the brewing industry, of their being enabled to resume the manufacture of the product upon which their respective reputations for high-grade beers were founded and built.

Upon what did they build up their reputation? How did they make their wealth? Was it by selling nonintoxicating stuff? They were built up by selling that beer which, as he said, was satisfying, that has a warmth, a stimulation that one does not get from nonintoxicating beverages. He continued:

If deprived of the use of any of the necessary materials that should and must enter into the manufacture of the beer they made and which were known for their particular blend, their products would be entirely devoid of the identity which formerly characterized them.

Speaking for ourselves, our Budweiser and other well-known and distinctive products were regarded as being in the class of fine European beers and were brewed of the choicest American hops, barley, and rye, plus a certain percentage of European hops. Without the good will and patronage of the masses, the brewing industry of this country cannot possibly succeed.

To tax beer to the point that would make the price of it prohibitive to the consuming public or to set up such unreasonable barriers as would place it beyond their reach would be to frustrate the very purposes for which beer is being relegalized, namely, to satisfy the demand of the masses for their beer; to provide revenue for the Federal, State, and municipal governments; to eliminate the bootlegger and the gangster from the beer business; and to afford relief for unemployment.

I ask you, my senatorial friends, how are we going to eliminate the bootlegger who sells intoxicating beer by permitting a nonintoxicating beer? How are we going to compete with him if we give the public a nonintoxicating beverage and he can give them something else?

Mr. President, the bill, with great respect to those who framed it, is just the bill which Mr. Busch would have written had he taken his pen or pencil to it from beginning to end. He not only had his way as to the content but he fixed the tax which was to be paid. Do not forget that the reason why he fixed the tax at the amount he did, as he said, was because if they fixed it any higher he could not pass it on to the consumer; that he could pass on a $5-per-barrel tax to the consumer. So, Mr. President, he was willing to have a certain tax. He got it. He was willing to have a certain content. He got it. He wanted a beer the same as that upon which he had built up the reputation of his house. He got it.

I look upon Mr. Busch as the most eminent expert in the beer business in the United States. There is nothing like experience in the beer business. Professor Henderson and the rest of them dwindle into insignificance when compared with the man who knows.

Let me, at the risk of wearying the Senate, call attention to some further statements on this question:

"Beer, which is a malt liquor containing 2¾ percent alcohol by weight, which equals 3⅓ percent alcohol by volume, has a sufficient amount of alcohol to intoxicate an average person in the quantities often consumed. With this amount of alcohol in the liquor many people could consume enough to produce intoxication by the amount which could be held in the stomach at one time. The walls of the stomach are very distensible and greater quantities than a quart of liquid may be consumed by many people within a few moments," says Dr. Harvey W. Wiley.

"A half ounce of alcohol contained in the ordinary sized bottle of 2¾-percent beer (by weight) is far more than enough to disturb the balance of judgment of an average, normal, sensitive person taken on an empty stomach.

"I consider no beer safe above one half percent of alcohol by volume, which would mean about three fourths of a teaspoonful of alcohol to an ordinary bottle of beer," says Dr. Howard A. Kelly.

STATE OF MICHIGAN,
County of Ingham, ss:

Abel R. Todd, being duly sworn, deposes and says that he resides at 817 West Lapeer Street, Lansing, Mich.; that he is State analyst for the food and drug department for the State of Michigan; that he graduated from the University of Valparaiso with the degree of H.P.G. in 1910; that from the University of Michigan he received the degree of P.H.C. in 1911, and a degree of B.S. in 1913; that he has been connected with the State food and drug department for the past 8 years; that he is able to determine the alcohol by volume of any beer; that on many occasions he has analyzed beer which was found to contain 3 percent alcohol by volume.

Deponent further says that beer containing 3 percent alcohol by volume is intoxicating, as deponent well knows from various tests and examination made. As one such test deponent has drank beer containing 3 percent alcohol by volume and knows personally from his individual experience that such beer is intoxicating.

Further deponent says not.

ABEL R. TODD.

———

Personally appeared before me, the undersigned, notary public in and for the State of New York, Henry Carter, who, being duly sworn, said that he is a member of the Central Control Board (liquor traffic) of Great Britain.

1. That said Central Control Board, in making restrictive orders on the sale of intoxicating drinks in Britain, had to consider what were intoxicating drinks and nonintoxicating drinks. That board acted upon the definition of beer in section 52 of the Finance Act

(1909–10) in determining this question. Said section of said act is as follows:

"The expression 'beer' includes ale, porter, spruce beer, black beer, and any other description of beer, and any liquor which is made or sold as a description of beer or as a substitute for beer and which on analysis of a sample thereof at any time is found to contain more than 2 percent of proof spirit." (Finance Act, 1909–10.)

"Proof spirit" is composed of alcohol and water in about equal parts—49.28 percent alcohol, 50.72 percent water (by weight).

Beer containing 2 percent "proof spirit" equals approximately 1 percent of absolute alcohol. This is the line of demarcation between intoxicating and nonintoxicating drinks, including beer, in Britain today.

A liquor containing over 2 percent "proof spirit" is taxed as intoxicating liquor, but if under 2 percent "proof spirit" it is taxed as "table waters."

That from his observation and based upon the information before the board, beer containing 2 percent "proof spirit" is in fact an intoxicating liquor.

HENRY CARTER.

CHICAGO TRIBUNE, HEALTH DEPARTMENT,
Chicago, April 22, 1919.

I was professor of pathology, University of Illinois Medical School, for 16 years. I am now, and for 11 years have been, professor of sanitary science, Northwestern University Medical School. I was commissioner of health of Chicago from 1907 until 1911.

It is my opinion that beer containing 2¾ per cent alcohol by weight is intoxicating.

W. A. EVANS.

THE STATE OF OHIO,
Delaware County, ss:

On this 15th day of April A.D. 1919, personally appeared before me, the undersigned, a notary public in and for said county and State, George O. Higley, who being by me duly sworn according to law, says he is professor of chemistry in Ohio Wesleyan University, having held this chair for 14 years; that previous to his election to his present position he was for 14 years a member of the chemical faculty of the University of Michigan; that in 1905 he received from the University of Michigan the degree of doctor of philosophy—chemistry and physiology being his subjects.

That he has made considerable study of the effect of poisons upon the human mind and body, making also numerous chemical analyses of beer and of the stronger alcoholic liquors, and that he believes:

First. That the drinking of beer containing 3 percent of alcohol, by volume, often results in hilarious outbursts followed by surly behavior.

Second. That in the stage of this excitation often termed the "jolly" condition, the drinker loses his self-control and often his self-respect, his actions becoming careless and even immoral.

Third. That a larger dose of this same liquor may cause the subject to become quarrelsome.

Fourth. That emotional manifestations of fear, jealousy, and hatred may be aroused without cause so that crimes are committed.

Fifth. That the subject who shows any of these departures from his normal condition is "intoxicated" in the proper meaning of that term, although he does not stagger and is not "drunk" in the popular meaning of that term.

Sixth. That he believes that a court may very properly hold as intoxicating not only whisky, brandy, and gin, but also beer, even if it contains alcohol to the amount of only 3 percent by volume.

GEORGE O. HIGLEY.

Since national prohibition there was published in March 1924, by the Carnegie Institution of Washington a treatise entitled "Alcohol and Human Efficiency", by Dr. Walter R. Miles, giving the result of experiments as to the toxic effect of alcoholic beverages as weak as 2.75 percent by weight. This is perhaps the most complete and prolonged study of this question that has been made.

The Senate Committee on Manufactures of the present Congress, in the report submitted by Dr. HATFIELD, S.Res. 635 to accompany S. 436 and S. 2473, summarized the evidence before that committee on the toxic effect of alcohol as follows:

As the testimony on a beverage of 2.75 percent alcoholic content to be taken as genuine evidence on the physiological effect of an alcoholic solution containing 3.2 percent by weight, or 4 percent by volume. Reverting to the question of a 2.75 percent alcoholic content by weight, the conclusions of the classic and thorough researches of the Carnegie Institute are clear and unmistakable, as found in Report No. 333, Alcohol and Human Efficiency, by Walter R. Miles, published by the Carnegie Institution of Washington, March 1924, on pages 272 to 276.

This research shows that the human reaction time and coordination was substantially reduced. In greater detail, there was a decrease in the eye and word reaction time. The visual acuity, eye movement velocity, a slower finger-movement speed, lowered coordination, and a decreased speed as shown in such tests as typing accompanied by an increased number of errors.

In the above-mentioned report, No. 333, on page 209 is given the dilution of alcohol employed in the experiment. I quote:

"In order that there may be no possible misunderstanding about the weight and dilution of the ethyl alcohol used, the details concerning dosage which apply to this chapter are all brought together here. All subjects received the same dose on the first, fourth, and fifth days of their individual experimental series. This was 27.5 grams of absolute alcohol, about 0.5 cubic centimeter per kilogram of body weight, in 300 cubic centimeters of grape juice, the mixture being diluted with water to a total volume of 1 liter or 1,000 cubic centimeters."

I again quote on page 275 from the above-mentioned report of the Carnegie Institution:

"There is no longer room for doubt in reference to the toxic action of alcoholic beverages as weak as 2.75 percent by weight. If 27.5 grams of alcohol are taken in this form, the well-defined and measurable depression in physical and mental processes, judged within the limits of this investigation, is not far short of the result found when 21 to 28 grams of alcohol are taken in solutions varying from 14 to 22 percent."

The elaborate efforts to enlist science in building up a proof that alcoholic solutions of the strengths provided for in Senate bills 436 and 2473 are without effect on the human reactions and, in fact, nonintoxicating, have failed. On the contrary, the effect of alcohol found in dilute solutions upon human behavior has a vital relation to present-day problems of our modern civilization.

I also now make reference to some legal opinions and shall not comment upon them, but leave them to speak for themselves.

WHAT THE COURTS HAVE HELD WITH RESPECT TO BEER

In Black's treatise on The Law of Intoxicating Liquors it is said respecting beer (sec. 17, p. 19):

The preponderance of authority is to the effect that when the word "beer" is used, without any restriction or qualification, it denotes an intoxicating malt liquor; that when thus occurring in an indictment or complaint, or in the evidence, it is presumed to include only that species of beverage; and that being taken in this sense, it will be sufficient, unless it is shown by evidence that the particular liquor so described was nonalcoholic.

In *Fuller* v. *Jackson* (52 So. 873, 30 L.R.A. (N.S.) 1078) the Supreme Court of Mississippi held:

The court takes judicial notice of the fact that liquor containing more than 2 percent of alcohol by weight will intoxicate.

Chief Justice Mayes declared (30 L.R.A. (N.S.) 1081):

It may be also stated that I take judicial notice of the fact that any liquor containing more than 2 percent of alcohol by weight will intoxicate, as a matter of fact, if drunk to excess. See full report of case of *United States* v. *Cohn* (2 Ind. Terr. 474, 52 S.W. 41). In the Cohn case, in the proof found in the report of the case, it is shown by expert witnesses that beverages containing more than 2 percent of alcohol will intoxicate, and the trial court in that case took judicial notice of it. It is also shown in that case that the Government fixed 2 percent of alcohol, by weight, as in truth constituting an intoxicating liquor. I feel, therefore, that I am safe in saying that I shall take judicial notice of a fact so well established by proof and legislative action.

See *United States* v. *Cohn* (52 S.W. 41, 2 Ind. Terr. 474).

The Court of Appeals of Virginia, in construing the Byrd liquor law of that State (Laws 1908, p. 275, ch. 189), said:

It being provided that "malt beverage" shall be sold by the manufacturer only to the customer, not to be drunk where sold, and in quantities of not less than one-half dozen bottles nor more than 4 dozen bottles at any one time and that it shall not be sold or offered for sale by any other person, firm, or corporation; that "malt beverage" shall be sold only in bottles in which shall be blown in letters at least one-half inch in height the name and address of the manufacturer, and the words "malt beverage"; and that no person, firm, or corporation shall place in such bottles and sell, or otherwise transfer, any liquid containing alcohol in excess of 2¼ percent in volume. The penalty fixed for violating any of the provisions of the section is a fine of not less than $500 nor more than $1,000, or, in the discretion of the jury, confinement in jail for not less than 3 nor more than 12 months for each offense. (*Commonwealth* v. *Henry*, 110 Va. 879; 65 S.E. 570.)

Mr. President, it would be well, if it were possible to do so, to analyze all the testimony taken before the House committeee. It is plainly disclosed there, especially by the attorney for the brewery interests, that this is the same beer that was sold prior to prohibition. Mr. Levi Cook is now deceased. While Mr. Cook was representing the brewing interests, really a lobbyist for the brewing interests, he was a man of integrity, a man of candor, and, in my judgment, a man of character. I knew him well. He was exceedingly candid before the committee. No one can read his testimony without coming to the conclusion that he did not intend to conceal from the committee that this beer

is the same beer which Busch and the other people had been selling prior to prohibition. It discloses beyond peradventure that such was their contention and such is the fact.

It has been said, Mr. President, that there is an English report which permits of a content of 3.05 percent.

I want to call attention to the report made by the British Government, a report of the royal commission, a report which was made after the report from which the Judiciary Committee secured its information. There they fixed definitely 2 percent as the dividing line between intoxicating and nonintoxicating beer. This examination was made at great length by experts, by those who were not interested in the matter from a political standpoint, but solely for the purpose of advising the Government.

Mr. President, quoting briefly—for I shall not go into details—the report of the royal British commission to which I have referred says:

> That all beers below 2 percent proof spirit are nonintoxicating, and all beers above 2 percent proof spirit are intoxicating.

I quote another statement briefly:

> The CHAIRMAN. You are appearing today on behalf of the brewers' society?
> Yes.

This is the testimony of a Mr. Nicholson.

> You are the managing director of the Associated Brewers?
> Yes.

Then the witness was asked with reference to the line of demarcation between intoxicating and nonintoxicating liquors.

He replied:

> Two percent marks the line between nonintoxicating and intoxicating liquors.

The report of the commission, which was made long after the report upon which the Judiciary Committee relied, fixed the amount of alcoholic content in testing the question of intoxicating or nonintoxicating at 2 percent, and in a number of instances in the supreme courts of the different States, as we have seen, it has been held that those courts would take judicial notice of the fact that 2 percent beer was intoxicating.

As I said at the beginning, there are just two questions involved in this proposal in which I am interested. The first is as to whether this beer is intoxicating, and the second is whether there is sufficient protection thrown around the places where the beer is to be drunk.

I am clearly of the opinion that it is intoxicating; I am clearly of the opinion that if it is permitted to be consumed where sold it will be intoxicating, whether the actual content as designated by the law is intoxicating or not. In other words, intoxicating liquor will be sold; there is no possible way to prevent it, for if 3.2 percent beer is permitted and it is necessary to have 3.5 or 3.10 beer, it will be sold.

Mr. President, we are enacting a law which, in my judgment, is prohibited by the Constitution; but, of course, we are enacting it at a time after that constitutional provision has been submitted to the people. It might seem, therefore, that it is less important for us to observe the integrity of the Constitution under those circumstances because of the fact that such opposition to the Constitution has arisen that it has been thought well to submit it to the people for their judgment; and since it may be assumed for the sake of the argument that in all probability it will be repealed, it may seem therefore that we need not be so concerned about a technical observance of a provision which is likely to be taken out of the Constitution.

Mr. President, I take the position that so long as the eighteenth amendment is in the Constitution we have no more right to nullify it because it is on its way for a vote than we would have if it were simply coming here for the first time for consideration. I am aware that the eighteenth amendment apparently has become unpopular. I am aware that the people may dispose of it. But, while the eighteenth amendment may in the near future be repealed, I contend it in no way changes our responsibility.

Mr. REED. Mr. President, will the Senator permit an interruption?

Mr. BORAH. Certainly.

Mr. REED. With the proposition just enunciated by the Senator no one, it seems to me, can disagree. Until the last of the necessary States has ratified the repealer amendment, the eighteenth amendment is just as much law as it ever has been. There cannot be much doubt about that. Before the Senator takes his seat, however, I should like to have his view on this aspect of the constitutional question.

It seems to me that from the constitutional standpoint it is just as important that Congress should stay within the powers that have been given to it as it is that it should carry to the full extent the prohibition of such amendments as the eighteenth. That is to say, if Congress goes beyond the limit of intoxication in beverages, and goes from the hypothetical 2 percent which the Senator has mentioned on into a prohibition of nonintoxicants, Congress is going beyond the powers delegated to it; and it seems to me that that is just as important as for Congress to fall short by 1 percent in enforcing the prohibition of the eighteenth amendment.

I have felt that the effect of the passage of this bill will be to put the exercise of power by Congress somewhat closer to the actual facts of the matter, as determined by the experience of mankind, than did the Volstead Act.

If no other Senator joins in perplexity on that question, I wish, for my own enlightenment, the Senator would give me his views on that.

Mr. BORAH. I am not sure that I catch the Senator's position. Do I understand the Senator to say that it is just as much our obligation not to go beyond what the Constitution permits as it is to enforce its provisions?

Mr. REED. Exactly.

Mr. BORAH. I will not at this time disagree with the Senator on that.

Mr. REED. If the Senator will forgive me for trespassing on his time, if we can agree, to start with, that it is just as important that we should stay within the powers delegated to us as it is that we should go to the full extent of the powers given to us, then the closer we get to prohibiting those things that are actually intoxicants and staying away from the prohibition of nonintoxicants, the better we perform our functions.

Mr. BORAH. I quite agree with that in theory, but, really, failure to give the full content permissible is not violating the Constitution in the sense that going beyond the Constitution is—the first is permissible, the latter is prohibited.

Mr. REED. Now then, it seems to me that the percentage stated in the pending bill comes closer to the actual line of distinction between intoxicants and nonintoxicants than does the Volstead Act.

Mr. BORAH. Possibly so.

Mr. REED. And for that reason this bill is, to some extent at least, an improvement over the Volstead Act.

Mr. BORAH. It is an improvement provided the bill does not go so far as to include intoxicating liquor. If 3.2 percent is actually intoxicating, we have come in conflict with the prohibition of the Constitution. I should be perfectly willing to admit the contention the Senator makes, that in passing a statute under the Constitution we should come as near to the line between intoxicating and nonintoxicating as is practicable; but what I am contending for here, if the Senator please, is that we have reached the point in this matter where we have actually impinged upon the Constitution itself.

Mr. REED. And that depends largely upon the question of the experience of mankind in dealing with these beverages that are near the dividing line between nonintoxicants and intoxicants. Is not that so? And whatever conclusion is reached is bound to be untrue in the case of some individuals who are extremely susceptible or extremely proof against the influence of these drinks that are on the border line. Of course that is so.

Mr. BORAH. Yes; but we should always resolve the doubt, if we are legislating, so as to protect the Constitution of the United States and not impinge upon it.

Mr. REED. Ah, but I think we are protecting the Constitution of the United States when we are careful to stay within the powers that are given us.

Mr. BORAH. Of course, that is true; but we have not kept within the powers which are given us if we permit that beverage which is actually intoxicating. I contend that 3.2 percent beer is an intoxicating beverage, and has always been an intoxicating beverage; that it was the beverage which was sold prior to prohibition as an intoxicating beverage; it is the beverage which is accepted in other countries as an intoxicating beverage, and I contend that that is clearly under the prohibition of the Constitution. Now, if we make it, for instance, 2.75 percent, I think that is very close to the dividing line. It is the utmost limit, if not too far.

Mr. HATFIELD. Mr. President, will the Senator yield?

Mr. BORAH. I do.

Mr. HATFIELD. It has been definitely proved by scienticfic investigators that 2.75 percent beer is intoxicating, and reduces the nerve reaction, the nerve impulses. The proof is conclusive as the result of experiments carried on by Dr. William R. Miles, a doctor of philosophy from Harvard University, over a period of something over a year.

Mr. BORAH. It may be that 2.75 percent beer is intoxicating, but it is certainly nearer the line than 3.2 percent beer.

Mr. HATFIELD. There is no doubt whatever about that.

Mr. BORAH. And I think 3.2 percent beer is so clearly over the line that it is prohibited by the Constitution.

I want to stay within the Constitution. I think there is much in what Chief Justice Taft said, that the permitted percentage had better be too low than so close to the line that in the practical execution of it we would be unable to protect the Constitution; but it is undoubtedly true, as the Senator says, that we should keep as nearly as practicable to the line which marks the difference between intoxicating and nonintoxicating liquors. I have no doubt myself but that we are over the line.

Mr. REED. Mr. President, that brings up another question—and I am asking these questions not argumentatively, but because I want to have the Senator's thought on them. He has studied this question far more than I ever would have a chance to.

On the question of intoxication as it is mentioned in the eighteenth amendment, I have always wondered whether the intent of the people and of the Congress in 1919 was to prohibit a fluid that might have the effect upon the nerve reactions mentioned by the Senator from West Virginia, or whether it was to get rid of that type of intoxication that led to sodden drunkenness and the commission of crime. I never heard of a murder being committed on beer. I have heard of a great many being committed on spirits. I do not mean to say, now, that there are not strong fermented liquors that will intoxicate completely. We all know there are; but the kind of beer that contains 3.2 percent of alcohol does not often inspire men to go out and commit crime. At the worst, according to my own observation, it inspires them to go to sleep; and I do not believe that that is what the constitutional amendment was aimed at.

Mr. HASTINGS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Idaho yield to the Senator from Delaware?

Mr. BORAH. In just a minute.

May I say that the report of the royal commission of Great Britain which studied this question associated the question of beer with the question of crime. I do not know that I can turn to it immediately, but I will put it in the RECORD.

Mr. REED. May I interrupt once more? Then I will not do it again.

Mr. BORAH. I am very glad to have the Senator's questions.

Mr. REED. When an Englishman talks about beer, he means what we call ale.

Mr. BORAH. Oh, no; not in this report.

Mr. REED. If he discusses what he calls lager, then we are on the same basis, because what we call beer is called lager over there, and what we call ale is what they call beer.

Mr. BORAH. Mr. President, so far as this report is concerned it deals with beer, lager beer; it deals with ale; it deals with fermented liquors; and it associates the question of crime with the question of beer.

Mr. TYDINGS. Mr. President, will the Senator yield?

Mr. BORAH. I promised to yield first to the Senator from Delaware.

Mr. HASTINGS. Mr. President, in line with the questions asked by the Senator from Pennsylvania I desire to ask the Senator from Idaho whether he does not think that in order to find out what was intended when the eighteenth amendment was written and when it was approved by the various legislatures, we ought to consider what the statutes of the various States had to say with respect to a definition of intoxicating liquor. Those definitions in many instances were written by friends of the liquor business; and in order to prevent persons from selling intoxicating liquor without a license, they had written into the statute a definition of what constituted intoxicating liquor; and I know that in many instances—I do not know how many—that limit was fixed at one half of 1 percent.

I am wondering when the eighteenth amendment was prepared and adopted whether what the framers of it had in mind was that kind of a prohibition—namely, one half of 1 percent—or something to that effect; not the kind of liquor that is intoxicating in fact but the kind of liquor that would have some exhilarating effect upon the person who drank it.

Mr. BORAH. I think there is a great deal in what the Senator says. At that time we were dealing with intoxicating liquor in the sense in which we had accepted that term since the organization of the Government.

Mr. HASTINGS. That is what I had in mind.

Mr. LONG. Mr. President, is not this a fact? The Constitution provided that intoxicating liquor should not be sold, and you will find from the press reports of that day and time that it was generally thought that it would be a question for the jury. The action of Congress in coming along with the Volstead Act, and putting one half of 1 percent in it, taking it out of the hands of the jury to say what was and what was not an intoxicating liquor, was something that was not anticipated by many people who supported the eighteenth amendment.

Mr. BORAH. Chief Justice White said that the duty devolved upon Congress to fix the alcoholic content, as to what was intoxicating.

I want to call attention to another fact. We are told that this bill is to be enacted for the purpose of helping to bring back prosperity. We are going to tax the people for beer, put a sales tax upon beer, in order to bring prosperity, particularly to the American home. The most impoverished places upon the face of the earth are the places where beer is most used by the masses of the countries where it is sold. There is no place where there is such poverty, such destitution, such crime, such disease, to be found as in the beer-using centers of the old world.

Eighty percent of the money collected for this beer in the way of taxes would come from the workingman's home in the United States. Beer is a workingman's drink, and every cent that is paid for beer out of that home will mean less money for the children, for their education, for their clothing, for music in the home, for the things which make a home what it ought to be.

In a volume entitled "Social and Economic Aspects of the Drink Problem", the result of the work of a committee of social workers, it says:

> The conclusion appears to be justified that from 25 percent to 30 percent of the whole poverty in a typical working-class district is caused or contributed to by drink. * * * Drink is the

predominant cause of secondary poverty, as defined on page 98, and the proportion of cases due to it may be as high as 85 percent. Out of 196 families in secondary poverty 168 were due to drink.

A London correspondent of the Monitor says:

Despite a gradual drop in the consumption of alcoholic beverages, drink remains the one and primary cause of crime and poverty. Yearly it drains millions of pounds from the nation's already overtaxed fund for law relief. Of the average working class in Great Britain, from 25 percent to 30 percent of the poverty is caused or contributed to by drink. It is responsible, directly or indirectly, for fully 40 percent of the common criminal offenses dealt with in the criminal courts.

In Great Britain the beer bill alone in 1930 was £182,000,000, or $910,000,000. The entire drink bill was £277,000,000, or $1,385,000,000.

It is contended that under this bill 60,000,000 barrels of beer will be sold per year. This would be nearly 2,000,000,000 gallons, or 16,000,000,000 pints, or 32,000,000,000 glasses. That would be almost 280 mugs of beer for every man, woman, and child in the United States. It is contended this would bring in $300,000,000 in revenue. What would it cost the drinkers? Close to $1,500,000,000.

This sum of money will come out of the homes very largely of the workingmen of the United States and people in the humbler walks of life.

The taxes must necessarily come out of the budget of the home; and if we are to take $120,000,000 and put it into the Treasury of the United States, it will be just another tax upon those who are least able to pay it, and not only a tax, but, in addition to the tax, there is the beer, which does no one any good, and yet it must be paid for out of the budget of the family.

The attorney for the brewery interests before the committee said:

Too high a tax on beer would only encourage the bootlegger in this country whom we want to discourage. * * * The people cannot afford to pay luxury prices for this thirst-quenching beverage—a tax that is reasonable that the public can afford to pay, because the brewers cannot pay it without taking it from the masses of the American people.

This bootlegger is a convenient gentleman. First, you must put the alcoholic content high, otherwise the brewers cannot compete with the bootlegger. Second, you must put the tax low, otherwise the brewers cannot compete with the bootlegger. The bootlegger is looked upon as a most undesirable person, but certainly he was used most effectively to shape this bill. A person who can shape legislation by raising the alcoholic content and by lowering the tax on the content is not to be despised, it seems, even though you call him a bootlegger.

We are pointed constantly to those countries which have beer, and we are told that we are losing by reason of the fact that we have not the liquor traffic going in full blast. They have all the beer they need in England, they have all the liquor they want, it is in no sense prohibited, but what do the men in England say about the economic situation superinduced by liquor?

Lloyd George said a short time ago:

If we are going to found the prosperity of the country—its commercial prosperity, its industrial prosperity—upon an impregnable basis, we must cleanse the foundations of the liquor traffic.

Ramsay MacDonald said:

They tell us that we cannot be made sober by act of Parliament. I hate these little, smug, pettifogging, and inaccurate pieces of proverbial philosophy. I say that every experience that the world has had—go anywhere where experiments have been made, and the conclusion is absolutely inevitable and irresistible, that you can make men and women sober by acts of Parliament.

Phillip Snowden said:

If we could abolish the liquor traffic, and if I were responsible for raising the revenue of the country, I should view the prospect with the most complete complacency. The direct and indirect cost of the maintenance of the liquor traffic is a heavy burden upon the localities and upon the State.

Viscount Astor said:

It is impossible to reconcile the interests of drink with the interests of the nation.

The Right Honorable Sir Donald MacLean said:

The future belongs to the children. The three enemies of child life are ignorance, poverty, alcohol. Every one of them is preventable.

Sir Baden Powell, Chief Boy Scout, said:

It would be simply impossible for a man who drinks to be a scout. Keep off liquor from the very first. Make up your mind to have nothing to do with it.

The British labor committee said:

Our failure as a nation to achieve those improved social conditions, obtainable from the amount now spent in drink, must be counted as a part of the public cost of the drink traffic.

William E. Gladstone said:

The four great scourges of mankind throughout history have been drink, war, pestilence, and famine.

Every nation in the world, Mr. President, today has its liquor problem. The question has not been solved by any nation. It is useless to point to other countries and to other nations as examples to be imitated or emulated. They have their poverty, their crime, their ignorance, their destitution, and they are superinduced and caused in large measure by the liquor traffic.

Mr. President, it is contended by the supporters of this measure that this beverage now being provided for us is not intoxicating. It is contended that if the bill becomes a law, it will not run counter to the Constitution. Whatever may be our views, that is not the view the people take of the measure. We may urge here that we are not proposing to violate the Constitution, but ask the first 96 men you meet on Pennsylvania Avenue and they will tell you with practically unanimity that it does violate the Constitution. The man on the street will tell you that the Congress is engaged in getting around the Constitution; that while we pay lip service to that instrument which we have all taken an oath to support, both in letter and in spirit, that we are, in fact, evading its plain terms and nullifying its long-accepted inhibitions. We may urge to our dying day that we have kept the faith, but the common sense and the candor of the plain people tells them that we have broken our plighted oaths. Although we may be giving to the people what the people want, down in their hearts they will find no defense for the way we are doing it.

Let us look at the situation as it really presents itself to the people. We will at once see how grotesque becomes the contention that the beverage offered to the people is not intoxicating.

There appeared in the public print a few days ago a statement to the effect that a great holding company for breweries—the largest holding company in the world—was being organized. A vast monopoly was to be formed to dispense this nonintoxicating beverage! Read what these organizers, now ready to make gains out of men's appetites, have to say and you will readily see that they think differently than this body about this beverage being intoxicating. When this liquor is placed on the bar, the charge will be the price of an intoxicating beverage. It will be sold as an intoxicating beverage. When you levy a tax, it will be a tax such as would be levied upon intoxicating liquor. We read that the hotels have sent out word—the glad tidings that the old barroom is to be reopened in which to drink nonintoxicating beer! We are told that bars and bar fixtures have been recovered from the old storeroom, burnished and varnished, and made ready for the good old days prior to the adoption of the eighteenth amendment. Are these people making this preparation for nonintoxicating liquor? "Tell it not in Gath, publish it not in the streets of Askelon", lest they laugh you to scorn. Everywhere, save in the Congress, it is openly charged and distinctly understood that the Constitution is being avoided, disregarded, and that in spite of the Constitution intoxicating liquor is to be sold.

Mr. President, I am convinced that this proposed law runs counter to the plain terms of the Constitution. It seems to me to be at war with the very object and purpose which the people had in mind when they adopted this provision of the Constitution. It strikes down the policy which the Consti-

tution was designed to set up, establish, and maintain. That policy might have been all wrong. Upon that question the people will in all probability soon have an opportunity to pass. But in the meantime the Constitution still stands. And as such it prohibits what we are proposing to authorize and to clothe our authority with the sanction of the legislative will. That presents a question wholly apart from the question of prohibition, a question which transcends in importance any question to which prohibition by any possibility can give rise.

I know how unpopular the eighteenth amendment seems to have become. And the question of its repeal will soon be up to the people. The right to repeal is as sacred as the right to adopt. But until the eighteenth amendment is taken out of the Constitution, until it is removed from the fundamenal law, it is entitled to the same presumption and to the same protection and to all support which accompanies the most popular and sacred provisions in the entire Constitution. The eighteenth amendment may be unpopular, its doom may be near at hand, but the great constitutional principle announced by Washington, "The Constitution which at any time exists, until changed by the explicit and authentic act of the whole people, is sacredly obligatory upon all", is not unpopular, and will never become unpopular until constitutional government itself comes under the contempt of the people. It is for that principle that I am now contending. It has nothing to do with prohibition. It is a principle which has to do with and is vital to constitutional government.

I assume for the purpose of this argument that the people want to be rid of the eighteenth amendment. I assume for the purpose of this argument that they want a return of intoxicating beverages. But I do not assume that in securing these things they want to disregard the great and indispensable principles of constitutional government which require the servants of the people to respect both the letter and the spirit of the Constitution, until the Constitution is by the people rewritten.

If, after due consideration and reflection and in the manner provided by the Constitution, the eighteenth amendment is repealed, it will be nothing more as a governmental proposition than an orderly expression of the popular will which the Constitution always contemplates. One might question the wisdom of such a course but no one could deny the right of the people to take such a course. The procedure here seems to me to be wholly different. While we leave the Constitution unchanged in form, we in fact change its effect—we do so not only by running counter, in my judgment, to the terms of the Constitution but we do so also by making it impossible to enforce the Constitution. Even if the alcoholic content here designated is technically within the Constitution, yet as a practical proposition where 3.2 beer is sold, 4 percent or 5 percent beer will be sold as the demands of the trade require it. It will be impossible to enforce the law relative to intoxicating liquors.

A distinguished jurist, long Chief Justice of the Supreme Court, once said that constitutions, like religions, often remain in form after they have been rejected in spirit and after their binding force has in fact ceased to restrain legislators or courts. Under any circumstances and under all circumstances, it seems to me this bill strips the Constitution of its spirit and its purpose; and although the law may be found technically constitutional, it strikes down the Constitution because it makes it impossible to enforce it. When this law passes, the enforcement of the eighteenth amendment is at an end. The amendment becomes a dead letter.

I am aware that I am speaking at this time for a minority, but it is a minority that is worthy of every public man's respect—a minority whose sincerity and devoted citizenship no respectable person would undertake to impeach. Put aside all those whom you would designate as professional agitators, put aside all those who would make their support of this cause a thing of gain, put aside all those you would style wolves in sheep's clothing, and there is still left a vast body of sincere, patriotic men and women who will oppose to the last any effort to bring back, either directly or indirectly, the liquor traffic as it held sway in the old days. They are now in a minority, but minorities are not always in the wrong. Minorities under our system of government are entitled to be heard, and being heard very often become majorities. Do not be impatient with this minority; you were practically all part of it not long since. It may be that some discussion, some reflection, some deliberation will avoid mistakes in this most important matter. We are dealing with no ordinary question. It is a problem which has taxed the best thought of men and women for 3,000 years. It is a problem which demands the very best in the way of legislation that can be given to the subject. Whatever we may do, I venture to say that we will look back upon it with regret unless we give the subject the very best that we have.

It may be vain at this time, when the advocates of repeal are in the flush of victory, to call attention to these things. But in your haste to be rid of the eighteenth amendment you invite an awakening and the ultimate condemnation of your course if you do that in a way that not only nullifies the amendment but in a way that discredits and derides the constitutional principle upon which our whole fabric rests. You have the power. Is it not better to use that power with respect for the great principles of constitutional government? Renounce and repeal the eighteenth amendment if you will, but do so in the orderly method provided by the fathers. Proceed with respect for those principles which are vital to the stability of constitutional government. Repeal, but do not nullify. The former is a high and solemn privilege, and to exercise it you have an unquestioned right. But the latter course is indefensible. It establishes a principle at enmity with constitutional government, and in the end the method, at least, will meet the condemnation of the American people.

Mr. TYDINGS. Mr. President, the Senator from Idaho [Mr. BORAH] very properly and rightfully has a splendid reputation in this body and in this country as a lawyer, and I think the argument which he has just made is a proper argument. But it occurs to me that he has based his argument upon the philosophy that the eighteenth amendment prohibits the transportation and sale of intoxicating beverages, because always in the course of his argument he alluded to the fact that the subject which he was discussing was intoxicating beverages.

May I point out that the eighteenth amendment does not deal with intoxicating beverages, and I shall show by some decisions of the Supreme Court very shortly that there is a marked distinction between intoxicating liquors and beer and wine.

First, the eighteenth amendment refers to the transportation of "intoxicating liquors."

Who is there on this floor who will contend that beer is a liquor? What authority can be shown to prove the point that beer is a liquor? The dictionary is against it; the courts are against it; science is against it. Then upon what authority can beer be included within the scope of liquors?

First of all, let us read from the dictionary. The definition in the Standard Dictionary is:

> Liquor: Specifically one of the spirituous kind as distinguished from wine and beer.

The definition in the Century Dictionary is as follows:

> Especially a spirituous or distilled liquor as distinguished from fermented beverages, as beer and wine.

These definitions occur frequently in the decisions of the Supreme Court which I will read. There is not a word in the eighteenth amendment about intoxicating beverages. All the power Congress has to deal with this subject is encompassed in the words "intoxicating liquors."

Mr. BORAH. I concede that.

Mr. TYDINGS. Mr. President, if beer is not an intoxicating liquor, Congress has no more authority to deal with it than it would have had had the eighteenth amendment never been adopted. To say, on the one hand, that beer is not an intoxicating liquor, and to say, on the other hand, that only intoxicating liquors are prohibited is to say, in effect, that Congress has no authority to deal with beer whatsoever.

Let us see what the court says. Let us take the case of Hollender against Magone. In that case the Supreme Court had before it the following facts:

The tariff act of March 3, 1883, permitted a rebate in duty for property damaged in voyage, but prohibited an allowance for damage in the case of "wines, liquors, cordials, or distilled spirits." The words "wines, liquors, cordials, or distilled spirits" are the exact words used in the decision of the court.

Hollender had imported beer, which was damaged on the voyage, and claimed a rebate under the tariff act passed by the Congress. The collector refused the rebate, and Hollender brought suit in the Circuit Court of the United States for the Southern District of New York, where the rebate was again refused. On appeal to the Supreme Court—and mark these words—a unanimous bench, Mr. Justice Brewer, a very learned and distinguished jurist, delivering the opinion of the court, said:

Said the unanimous decision of the Supreme Court of the United States:

> In the first place, the word "liquors" is frequently, if not generally, used to define spirits or distilled beverages, in contradistinction to those that are fermented. Thus, in the Century Dictionary, one of the definitions is "an intoxicating beverage, especially a spirituous or distilled drink, as distinguished from fermented beverages, as wine or beer." See also *State* v. *Brittain* (89 N.C. 574, 576), in which case the court said: "The proof was that the defendant sold liquors, and it must be taken that he sold spirituous liquors. Most generally the term 'liquor' implies spirituous liquors." The context indicates that it is here used in its narrow sense. If "liquors" is here used in its generic sense, the other terms are superfluous.

The Supreme Court might have added to its quotation from the Century Dictionary the definitions given by the Standard Dictionary, published by Funk & Wagnalls, who, grimly enough, were the great publishers of prohibition literature and published the prohibition journal. The definition in the Standard Dictionary of the word "liquor" is, "Specifically one of a spirituous kind as distinguished from wine and beer."

It is perfectly true that the facts in the Hollender case enabled the Supreme Court to limit its decision to the particular language of the tariff act of 1883, but it is not possible to read the opinion without seeing its bearing upon the construction of the word "liquors" in the eighteenth amendment.

May I say, in parentheses, that the question as to whether or not beer and wine are included within the scope of liquors has never been tested by the Supreme Court since the adoption of the eighteenth amendment; and in all the decisions of the court, one piled on the other, the court has always drawn a distinction between a distilled liquor and wine and beer whenever that question has arisen.

Mr. BLACK. Mr. President, I have Webster's Dictionary here. Will the Senator allow me to put the definition in the RECORD at this point?

Mr. TYDINGS. Will the Senator do that later?

Mr. BLACK. I understood the Senator to say the dictionary did not say that beer is a liquor.

Mr. TYDINGS. I quoted the Standard Dictionary and I quoted the Century Dictionary.

Mr. BLACK. I understood the Senator to say Webster's Dictionary.

Mr. TYDINGS. No; I did not say Webster's. I quoted the Standard Dictionary and the Century Dictionary. That is what the record of the official reporters will show.

Mr. BLACK. If it is out of place now, I shall put the definition in the RECORD later.

Mr. TYDINGS. May I say in reference to what the Senator from Alabama has just suggested that there are half a dozen explanations or definitions in Webster's Dictionary and I will admit that one of the definitions there is rather ambiguous in that it says it might include or might not include, as I recall having read it. But the dictionaries to which I referred were the Standard and the Century, and that is exactly what the official reporter's notes will show.

Mr. BLACK. I am sure of that.

Mr. TYDINGS. Let me finish with the decision of the court. The court, therefore, reversed the decision of the lower court on the ground that the word "liquor" did not include "beer." These are Supreme Court decisions.

Mr. BORAH. What supreme court? The United States Supreme Court?

Mr. TYDINGS. Yes; the Supreme Court of the United States, a unanimous court, a decision rendered by Mr. Justice Shiras, one of the ablest judges that ever sat on that court.

Mr. BORAH. He is the man who changed his position on the income tax.

Mr. TYDINGS. Many have changed their positions so often that it is a little hard to keep up with the court recently. [Laughter.]

I will give the title of the case again. It is *Hollender* v. *Magone* (149 U.S. 586.) The Supreme Court might have added to its quotation from the Century Dictionary which it quoted the definitions given by the Standard Dictionary published by Funk & Wagnalls, who strangely enough were the great publishers of prohibition literature and who published the prohibition journal.

Now I am going to give the Senator from Idaho another case.

Mr. BORAH. Mr. President, will the Senator permit me to put in a case or two there?

Mr. TYDINGS. Yes; I will.

Mr. BORAH. In a case in the Supreme Court of Mississippi the court takes judicial notice of the fact that liquor containing more than 2 percent of alcohol by weight is intoxicating.

Mr. TYDINGS. The Senator said "liquor." I am talking about beer! [Laughter.]

Mr. BORAH. The Supreme Court of Virginia, speaking about beer, said:

> Doubtless the legislature took cognizance of the well-known fact that the minimum percent of alcohol in what is commonly known as "beer" is 2¼, and even this weakest form of beer has been found and held intoxicating.

Mr. TYDINGS. I do not think that is a parallel case for two reasons. First of all, in order to interpret that statute, we would have to have the statute of Mississippi itself to see whether or not the legislature projected its power within the constitutional limits. I am reading from the Constitution of the United States, which allows us to legislate only with regard to intoxicating liquors. Perhaps the Constitution of Mississippi allows a wider compass. It may include beer and wine and ale and gin and cordials. But I am reading from the Supreme Court decision, which I submit is almost as good law as the Supreme Court of Mississippi. [Laughter.]

Here is another case of Sarlis against United States, to which I alluded just a moment ago, and the Senator from Oklahoma asked that I put it in the RECORD:

> Sarlis was indicted for introducing into the Indian country 10 gallons of lager beer alleged to be spirituous liquor. The indictment was upheld by the District Court for the Western District of Kansas, but on an appeal to the Supreme Court a unanimous bench—Mr. Justice Brewer delivering the opinion of the Court—held that beer was not a spirituous liquor.

Mr. BORAH. Of course, that is true.

Mr. TYDINGS. Let me read all that the court said:

> The facts in this case show that section 2139 of the Revised Statutes provided that "no ardent spirits shall be introduced into Indian country. Every person (except an Indian in an Indian country) who sells, exchanges, gives, barters, or disposes of any spirituous liquors or wines to any Indian" shall be punished by fine or imprisonment.

The Supreme Court, in its opinion, says:

> It was contended on behalf of the defendant in the court below that lager beer is not "spirituous liquor or wine."

The Court then quoted from various dictionaries, including the Century Dictionary, to which I have before alluded, and quoted from the Hollender case, which I have just read. The Court then continued:

So far, therefore, as popular usage goes, according to the leading authorities, lager beer, as a malt liquor, made by fermentation, is not included in the term "spirituous liquor", the result of distillation.

The Court further says that the statutes of the United States have always distinguished between spirituous liquors or distilled spirits and malt liquors.

The conclusion of Mr. Justice Brewer's opinion is worth quoting in full. The Government had relied upon a decision of the Supreme Court of North Carolina in the case of *State* v. *Gresich* (98 N.C. 720), which Mr. Justice Brewer describes as follows.

I should like to have the attention of the Senator from Idaho particularly to this because I think it anticipates a question which I know he is going to ask.

Mr. BORAH. I am not only going to ask it but I am going to concede that the Senator's contention is absolutely correct. We are not contending that beer is a spirituous liquor. We are contending that it is an intoxicating liquor.

Mr. TYDINGS. The courts say it is not. Let me read further:

That was a case where a statute of North Carolina prohibited the introduction and sale of spirituous liquors, and the court held these terms to be generic and to include all intoxicating liquors containing alcohol, whether distilled, fermented, or vinous.

Mr. Justice Brewer disposed of this case in the following indignant language. This, I think, throws a great deal of light upon the correct interpretation of the words "intoxicating liquor" in the eighteenth amendment. I am quoting the decision of the court:

The reasoning on which such a conclusion is reached excludes the common and popular significance of the words and finds the meaning of the statute in the fact, true in a scientific sense, that alcohol is found in fermented as well as distilled liquors, and that the purpose of the statute is to prevent the mischief occasioned by the use of intoxicating drinks.

We cannot agree with this method of reading a penal statute. The purpose of such a statute is to notify the public of the legislative intent, not to furnish scientific definitions. That intent is in most cases to be found by giving to the words the meaning in which they are used in common speech.

Nor can courts in construing penal statutes safely disregard the popular signification of the terms employed in order to bring acts otherwise lawful within the effect of such statutes because of a supposed public policy or purpose. The danger of substituting for the meaning of a penal statute, according to the popular or received sense, the conjecture of judges as to a supposed mischief to be corrected is pointed out by Chief Justice Marshal, when in the case of *United States* v. *Wiltage* (18 U.S. 96) he said:

"To determine that a case is within the intent of a statute the language must authorize us to say so. It would be dangerous indeed to carry the principle that a case within the reason or mischief of a statute is within its provisions, so far as to punish a crime not enumerated in a statute, because it is of equal atrocity or of a kindred character with those which are enumerated."

In other words, here is a case where, as I see it, the Senator from Idaho has argued in effect that the eighteenth amendment prohibits the sale or the manufacture of intoxicating beverages. The word "beverages" does not appear in the eighteenth amendment itself. The eighteenth amendment only prohibits intoxicating liquors for beverage purposes. If beer is not an intoxicating liquor—and I submit that under the Hollender case the court has said it is not, and in that case upheld the contention that it is not—by what stretch of the imagination now can it become an intoxicating liquor? Indeed, as I have listened for 10 years to the arguments of the proponents of prohibition on this floor and in the House, it has been evident that they have assumed that the eighteenth amendment prohibits the manufacture, sale, and transportation of intoxicating beverages. It does nothing of the sort. It limits and prohibits intoxicating liquors, nothing more and nothing less.

Mr. BORAH. Mr. President——

The PRESIDING OFFICER (Mr. GEORGE in the chair). Does the Senator from Maryland yield to the Senator from Idaho?

Mr. TYDINGS. I yield.

Mr. BORAH. The sole question decided in that case was that beer was not a spirituous liquor.

Mr. TYDINGS. What kind of liquor is it? If it is not spirituous liquor, what kind is it?

Mr. BORAH. It is a malt liquor.

Mr. TYDINGS. What is wine?

Mr. BORAH. That is a spirituous liquor. But the Senator is contending now that an intoxicating liquor means an intoxicating spirituous liquor. Nobody is contending that that is true. If the eighteenth amendment declares that all intoxicating spirituous liquors are prohibited, the Senator would be absolutely correct in his position. But the eighteenth amendment includes all liquors which are intoxicating, distilled, malt, or otherwise, and the sole question decided there was the question that beer is not a spirituous liquor.

Mr. ADAMS. Mr. President, will the Senator yield?

Mr. TYDINGS. I yield.

Mr. ADAMS. I merely want to make this inquiry. If the Senator is correct in his interpretation of the eighteenth amendment, then we have a good many people in the Federal prisons who do not belong there because they have been convicted of making beer, and if that is true, why the necessity for the bill now before the Senate?

Mr. TYDINGS. I hope the Senator will not touch on that, because I am coming to that myself.

Mr. President, in the previous case I quoted from the decision of the court itself in direct contradiction of what the Senator has just said, and I will quote from the court again.

So far as popular usage goes, according to the leading authorities, lager beer as a malt liquor by fermentation is not included in the term spirituous liquor, the result of distillation.

As a matter of fact, as I shall show later on, the court says that proof that there is this distinction is found in the fact that on all saloon signs in the old days there were the words, "Beer, Wine, and Liquors." Therefore, the popular acceptation has been all along, and we adhere to it in our tax laws, that each one of those general subdivisions of intoxicating beverages must be considered separately.

The argument which the Senator from Idaho made, if I understood him correctly, had to do with the fact that the eighteenth amendment in spirit sought to outlaw all intoxicating beverages. I believe that is what the writers of the eighteenth amendment sought to do, but they actually used the words "intoxicating liquors."

Mr. BORAH. I may have used the word "beverages" sometimes, but certainly we are arguing the question of intoxicating liquors.

Mr. TYDINGS. If the Senator will read his remarks tomorrow I am satisfied that 9 times out of 10 he will find that he said "intoxicating beverages."

Mr. BORAH. Well, it really would not make any difference.

Mr. TYDINGS. I think it would, because under the heading of "intoxicating beverages" coffee might be eliminated. For example, the Senator from West Virginia [Mr. HATFIELD], just a moment ago, said that 2.75 beer was intoxicating and that it would affect the nerves of those who drank it. I know enough about medicine to say that coffee will affect the nerves the minute it is drunk; and the Senator will not deny that.

Mr. HATFIELD. Mr. President, will the Senator from Maryland yield to me?

Mr. TYDINGS. I yield to the Senator from West Virginia.

Mr. HATFIELD. But the drinking of coffee will not affect the nerves in the same manner. [Laughter in the galleries.]

Mr. TYDINGS. Oh, well, the Senator from West Virginia did not say that. He said 2.75 percent beer would affect one's nerves.

The PRESIDING OFFICER. The Chair will admonish the galleries that demonstrations of any kind are not permitted to occupants of the galleries. The rules of the Senate must be observed by the occupants of the galleries.

Mr. BORAH. As I understand the Senator, he contends that the eighteenth amendment does not cover beer at all?

Mr. TYDINGS. My argument is that the Standard Dictionary, which I quoted, says that there is a difference between the three, and the way the definition reads, as I understand it, only intoxicating liquors—of which I do not think beer is one—are included.

Mr. BORAH. Then, as I say, the Senator's contention is that the sale of beer has never been prohibited?

Mr. TYDINGS. That is correct.

Mr. BORAH. Then, what would be the use of passing this legislation?

Mr. TYDINGS. The question has never been tested by the court, and therefore we have gotten no opinion either to verify what I say or to disprove it.

Mr. CLARK. Will the Senator from Maryland yield to me?

Mr. TYDINGS. Yes.

Mr. CLARK. The use of this legislation will be to raise some money with which to balance the Budget.

Mr. TYDINGS. That is one of the important features of the proposed legislation.

Mr. BORAH. Then, may I ask the Senator from Missouri, why refer to any alcoholic content at all?

Mr. CLARK. Because the sale should be regulated.

Mr. BORAH. Why not put in 4 percent, as some desire?

Mr. TYDINGS. May I say to the Senator from Idaho that I just cited a decision of the Supreme Court which quotes a definition of the word "liquors" which is found in two dictionaries. What is the definition of the words "intoxicating liquors", for not distilled liquors, not spirituous liquors, but "intoxicating liquors" are the things which are prohibited by the eighteenth amendment? The Standard Dictionary definition, which is quoted by the Supreme Court in both decisions, is as follows:

> Specifically one of the spirituous kind as distinguished from beer and wine.

I do not think that I have made myself plain to the Senator. I am maintaining that beer is not a liquor.

Mr. BORAH. Exactly.

Mr. TYDINGS. I am maintaining that the dictionaries which the Court quoted in its opinion said it was not a liquor; and I am maintaining that the philosophy of those decisions shows that it ought to be excluded.

Mr. BORAH. What I understand the Senator from Maryland to contend is that the eighteenth amendment does not apply to beer.

Mr. TYDINGS. That is correct.

Mr. LONG. Mr. President, will the Senator permit me to interrupt him?

Mr. TYDINGS. Just a moment. The second definition, that in the Century Dictionary, to which the court referred, reads as follows:

> Especially a spirituous or distilled drink as distinguished from fermented beverages, as beer and wine.

I should like particularly to have the Senator's attention as I read that last definition which the Court quoted. Speaking of the word "liquors", the Century Dictionary says:

> Especially a spirituous or distilled drink, as distinguished from fermented beverages, as beer and wine.

In other words, it took beer and wine out of the liquor class and labeled them under the classification of beverages.

Mr. HATFIELD. Mr. President——

The PRESIDING OFFICER. Does the Senator from Maryland yield to the Senator from West Virginia?

Mr. TYDINGS. Yes; I yield.

Mr. HATFIELD. Will the Senator tell me the difference in alcoholic content of beer and of——

Mr. TYDINGS. I did not get the beginning of the Senator's question.

Mr. HATFIELD. I ask what is the basis of all beverages having a liquor content?

Mr. TYDINGS. I do not understand what the Senator seeks to elicit.

Mr. HATFIELD. Well, alcohol is the basis of all intoxicating drinks. Is not that true?

Mr. TYDINGS. Is the Senator now talking about alcoholic beverages or liquors?

Mr. HATFIELD. I am speaking of alcoholic beverages, of anything with an intoxicating base.

Mr. TYDINGS. But I am only talking about intoxicating liquors, because that is all the eighteenth amendment mentions.

Mr. HATFIELD. In every quart of 2.75-percent beer there is just about a minim less than an ounce of absolute alcohol.

Mr. TYDINGS. The Senator's observation proves exactly what I have been contending here for half an hour. He assumes that the eighteenth amendment prohibits the manufacture and the sale of intoxicating beverages. It does nothing of the kind. It confines itself exclusively to the prohibition of intoxicating liquors, and beer and wine, not being liquors, are without the eighteenth amendment.

Mr. HATFIELD. Will the Senator yield further?

Mr. TYDINGS. Yes; I yield.

Mr. HATFIELD. Why is it the Court has not passed upon the point respecting the eighteenth amendment which the Senator now raises?

Mr. TYDINGS. Because no one has brought suit to test that point; but I have shown that in prior suits the Court has quoted definitions given in two dictionaries which draw a distinction between liquors and beer and wine. I am going to read the last definition over again. [Laughter in the galleries.]

Mr. HATFIELD. Mr. President, may I ask——

Mr. TYDINGS. Just a moment. The definition in the Century Dictionary——

Mr. WALSH. Mr. President, I rise to a point of order. There is a constant commotion, including laughter, in the Senate and in the galleries.

The PRESIDING OFFICER. The point is well taken.

Mr. TYDINGS. The definition of the Century Dictionary——

The PRESIDING OFFICER. The Senator from Maryland will suspend. The Chair will instruct the Sergeant at Arms to clear the galleries if any demonstration is repeated, and laughter is included in the word "demonstration" within the meaning of the rule of the Senate.

Mr. TYDINGS. Mr. President, may I point out to the Senator from West Virginia that the Court, in referring to a differentiation between the different kinds of liquors and beer and wine, quoted the Standard Dictionary and also quoted the Century Dictionary? The Century Dictionary, in defining the word "liquor", has this to say:

> Especially a spirituous or distilled drink, as distinguished from fermented beverages, such as beer and wine.

It therefore says, for instance, that beer and wine are neither spirituous nor distilled liquors.

Mr. BORAH. Then the Senator thinks that the eighteenth amendment not only excludes beer but excludes wine?

Mr. TYDINGS. I do. Unless the wine is distilled I think it is excluded. If it is fermented wine, it is excluded. All I am taking is the definition quoted by the Supreme Court of beer and wine and whisky in two decisions against which no decision has been rendered to the contrary.

Mr. HATFIELD. Mr. President, will the Senator yield further?

Mr. LONG. Mr. President——

The VICE PRESIDENT. Does the Senator from Maryland yield; and if so, to whom?

Mr. TYDINGS. I yield to the Senator from Louisiana.

Mr. LONG. Mr. President, the Senator from Idaho apparently does not catch what the Senator from Maryland, as I understand, has demonstrated. A legislative interpretation can include beer or wine as an intoxicating liquor, and it is possible for such legislative interpretation to be valid; but, as a fundamental substantive proposition, in the ordinary acceptation of the term, without legislative interpretation to the contrary, it would not seem that beer and wine would be intoxicating liquors.

Mr. TYDINGS. Mr. President, I do not think I can say that. If the Senator from Louisiana will listen for a moment, I will read from the eighteenth amendment. That amendment says, in part, that—

The manufacture, sale, or transportation of intoxicating liquors—

Not "intoxicating beverages" but "intoxicating liquors". Now let us see what a liquor is. Does a liquor include beer and wine? If it includes beer and wine, then they are prohibited under the eighteenth amendment; but if it does not include beer and wine, then they are not prohibited under the eighteenth amendment. Now, what does the Supreme Court say of liquors? The Supreme Court says:

Liquor is especially a spirituous or distilled drink, as distinguished from fermented beverages, such as beer and wine.

The dictionary which the Court uses in its opinion to define what liquor is says that beer and wine are fermented beverages, but not spirituous or distilled liquors. I submit that there is no contrary Court case which has ever held that beer and wine are distilled liquors.

Mr. BORAH. The only contrary court cases are the number of instances—hundreds of them—where individuals have been convicted for selling intoxicating liquor in the form of beer and wine. The courts have over and over again sustained convictions of persons who sold beer that had an intoxicating alcoholic content.

Mr. TYDINGS. Yes; but the Senator knows as well as I know that the question of the constitutionality of the Volstead Act, upon which those cases were predicated, was not the point at issue in the trial of those cases. There has been no decision rendered by the Supreme Court of the United States which has interpreted what is or what is not an intoxicating liquor for beverage purposes. The question of the constitutionality in that aspect of the case has never gone to the Supreme Court, and, indeed, I do not believe it has been passed upon by any district court in this country. In the Supreme Court decision, in which Mr. Justice Shiras rendered the unanimous opinion of the Court, it was held that beer and wine were not spirituous or distilled liquors.

Mr. BORAH. I agree to that.

Mr. TYDINGS. Yes; the Senator agrees to that.

Mr. BORAH. There is no controversy on that at all.

Mr. TYDINGS. So the only way beer could possibly be brought in under the eighteenth amendment was to call it a fermented liquor; but even the decision which the Supreme Court rendered in that case used the definition of the Century Dictionary, which says:

Liquor is a spirituous or distilled drink, as distinguished from fermented beverages, such as beer and wine.

Now, Mr. President, I want to take up for a few minutes the humanities of the question.

Here we are conceding, 12 years after the adoption of national prohibition, that if a beverage has less than 2 percent of alcohol by volume, it is not intoxicating. As far as I know, with one or two possible exceptions, everybody in the Senate, wet or dry, concedes that a beverage which has less than 2 percent of alcohol by volume is not an intoxicating liquor; but how many thousands of cases have been tried upon the assumption that a beverage containing as much as five eighths of 1 percent was in fact an intoxicating beverage? How many hundreds, perhaps, have gone to the jails and to the penitentiaries for a so-called "crime" which we, 12 years after the adoption of the amendment, ourselves admit was no crime at all? Where were those men who now speak about a fine rate of percentage, who sat idly by for 12 years and saw the jail population pile up, and had no heart and no law changed, who now come in and try to carry a percentage 500 places from the decimal point in order to fix with great distinctness exactly what is intoxicating and what is not intoxicating?

Think of all the misery; think of all the illegal arrests; think of all the illegal convictions! If we declare, as we shortly shall, in my opinion, that any drink containing less than 3.2 percent of alcohol is nonintoxicating, think of all those that we have sent to the penitentiary and jails and fined heavily during the past 13 years who now we are going to say, in 1933, never committed any crime anyhow! I say it is with poor sportsmanship, it is with bad logic, and with bad law in a sense, that we now take such infinite pains to stay within the Constitution when we have admitted already upon this floor that we went outside of it, and have put people in jail in the execution of a power which we did not have for 13 years?

Thirteen years ago we said that any beverage containing more than one half of 1 percent of alcohol by volume was an intoxicating liquor. It was a lie. It never had a shred of truth in it; and thousands of innocent victims have been sent to the jails under it. Thirteen years afterward, we are here to admit it.

Why did we not, during all that time, draw the distinction where it should have been drawn? We exceeded our constitutional power. It was a pure usurpation of power. We never had any right to deal with this matter further than the subject of intoxicating liquors. That was all the power we had; but we did not stop there. We exceeded our constitutional power; and it must be admitted now, I think, that if we should fix the permissible alcoholic content at even 5 or 6 percent we would not be violating our oaths of office. We would be using a part of the power conferred on us. Of course, it carries with it the moral prerogative that we should prohibit the sale of an intoxicating liquor.

I am not going to talk longer, Mr. President. In my judgment, all of the thought of this country, all of the speeches that come from the pulpit, all of the lectures that are made by the prohibitionists, all of the literature which is published, presuppose that the eighteenth amendment prohibits intoxicating beverages. It does nothing of the kind. It prohibits intoxicating liquors. I venture to say that tomorrow morning, if a man will read the CONGRESSIONAL RECORD, he will find that almost every Senator who has spoken on this question will have said "intoxicating beverages" as meaning what the Constitution really says, when, as a matter of fact, it says "intoxicating liquors"; but people assume, because it says "intoxicating liquors," that anything with any alcohol in it is within the scope of the amendment.

All we have to do here is to stay within the limits of the Constitution. Beer never was an intoxicating liquor. It is a fermented beverage. It never was an intoxicating liquor, and never will be. The Constitution has nothing to do with beer; and, in my judgment, we can eliminate beer entirely without violating the spirit or the letter or the purpose of the eighteenth amendment.

In conclusion, Mr. President, in the Hollander case the court said that you cannot read into a statute something which is not in the statute itself. You cannot suppose that because you meant to do a thing to cover a certain category you actually do cover it, unless you use words which will actually cover it. There is no contrary decision anywhere in the statute books. If it is contended that there is one, let somebody show where this court, anywhere in its history, ever said that beer was a liquor. On the contrary, there are many decisions which show that the court thought beer was not a liquor. If that is so, and the eighteenth amendment confines us to intoxicating liquors, these fine points about alcoholic content can be brushed aside, because, in my judgment and in line with the decisions of the court, we will not violate our oaths by voting for beer of even 4 or 5 percent alcoholic content, for it is not a liquor.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Haltigan, one of its clerks, announced that the House had agreed to the amendments of the Senate to the bill (H.R. 2820) to maintain the credit of the United States Government.

ENROLLED JOINT RESOLUTION SIGNED

The message also announced that the Speaker had affixed his signature to the enrolled joint resolution (H.J.Res. 75) to provide for certain expenses incident to the first session of the Seventy-third Congress, and it was signed by the Vice President.

NOMINATIONS IN THE NAVY DEPARTMENT

Mr. TRAMMELL. Mr. President, as in executive session, I ask unanimous consent to report back favorably, from the Committee on Naval Affairs, and submit for confirmation three different appointments in the Navy—the Assistant Secretary of the Navy, the Surgeon General of the Navy, and the Chief of the Bureau of Construction and Repair in the Navy Department.

I ask unanimous consent to have those nominations considered and acted upon as in open executive session.

The PRESIDING OFFICER (Mr. GEORGE in the chair). Is there objection? The Chair hears none, and the clerk will read the nominations.

The Chief Clerk read the nomination of Henry Latrobe Roosevelt, of New York, to be Assistant Secretary of the Navy.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

The Chief Clerk read the nomination of Medical Director Perceval S. Rossiter to be Surgeon General and Chief of the Bureau of Medicine and Surgery in the Department of the Navy, with the rank of rear admiral, for a term of 4 years.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

The Chief Clerk read the nomination of Naval Constructor Emory S. Land to be Chief Constructor and Chief of the Bureau of Construction and Repair in the Department of the Navy, with the rank of rear admiral, for a term of 4 years.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

Without objection, the President will be immediately notified of these confirmations.

AMENDMENT OF THE VOLSTEAD ACT

The Senate resumed the consideration of the bill (H.R. 3341) to provide revenue by the taxation of certain nonintoxicating liquor, and for other purposes.

Mr. WALSH obtained the floor.

Mr. BORAH. Mr. President, will the Senator permit me to add a brief observation in connection with the remarks of the Senator from Maryland?

Mr. WALSH. Certainly.

Mr. BORAH. I desire to quote from a legal work on intoxicating liquors, by Joyce, who is an authority upon this subject. He says, page 2:

> The word "liquor" is a comprehensive one, and in its broadest sense includes fluids which not only may be drank as a beverage but those which, on the other hand, cannot be, or are not reasonably liable to be, so used. Both intoxicating and nonintoxicating liquors are included within the meaning of this word. In its ordinary acceptation, however, it is generally understood as implying those liquors which are of an intoxicating nature; that is, such as are ordinarily used as a beverage and which tend to and will intoxicate.

The Supreme Court of Kansas defines intoxicating liquors as—

> Such liquors as will, if used as a beverage, produce drunkenness.

The Court of Appeals of New York says that the term "intoxicating liquors"—

> includes all liquors, whether spirituous, vinous, or malt.

That is also confirmed by the Supreme Judicial Court of Massachusetts.

Mr. WALSH. Of course, the Supreme Judicial Court of Massachusetts is always on the right side of every question.

Mr. BORAH. It has a very high standard.

Mr. WALSH. I appreciate the compliment paid to the Supreme Court of my State by the distinguished Senator.

Mr. President, I desire to discuss very briefly an aspect of this question that is very often overlooked.

Not all the people interested in the passage of this law, or in the adoption by the several States of an amendment repealing the eighteenth amendment, are interested in buying or selling or drinking intoxicating liquors. Not all are interested in breweries or distilleries. Not all are interested in the revenue that the Government may receive as a result of permitting the manufacture and sale of intoxicating liquors. There are many people behind the movement to repeal the eighteenth amendment and to modify the Volstead Act who are interested solely in good government and in the restoration of the fundamental principles of the Constitution which they believe in the long run will preserve inviolate our democratic institutions.

Mr. President, it is now generally conceded that national prohibition has been a failure. No one defends it as satisfactory. Some contend that it is better than the old system of selling intoxicating liquors through the saloon, but no one contends that it has been a success, that it has resulted in improving the morals or in strengthening the respect of our people for our system of government.

As a result of national prohibition, there have spread throughout the country evils and abuses that were unheard of under the old system. Under national prohibition, perjury, crime, and racketeering have increased beyond the bounds of control. Dishonesty in public life has developed to proportions heretofore unknown. Disrespect for law, disobedience of authority, and general disregard for those fundamental, sacred principles and truths that even under the old system were generally respected have increased.

This country gives unmistakable evidence of returning to the old order and to the Constitution of the fathers, namely, that of local control of this troublesome political question. Many of the people who are behind this legislation, and who are asking for the repeal of the eighteenth amendment, are actuated solely and alone by the honest belief that the States can better control and regulate the manufacture and sale of intoxicating liquors than the Federal Government can succeed in prohibiting the manufacture and sale of intoxicating liquors. They insist that the Federal Government rid itself of this purely local and State function.

A good deal is said in criticism of the saloon. Words may not be strong enough to use in condemnation of some of the conditions that existed in some parts of the country as a result of the saloon; but I inquire if the open control and regulation of the legalized sale of intoxicating liquors are not preferable to the speak-easy. Bad as the saloon is, it at least has some pretense of legal existence and is in the open, where its evils and abuses can be recognized and corrected if public opinion desires to do so. But the speak-easy is beyond control of public authority, is beyond regulation, its abuses are hidden, its evils are beneath the surface, it breeds crime, encourages racketeering, and enriches the profits of the underworld; it has brought into the public life of our country a train of new evils and abuses which threaten the very foundations of free institutions and orderly government.

Mr. President, what I have been saying can be much better stated in a paragraph which I desire to read from a well-known weekly which recently discussed this subject. In this weekly it is said, referring to the committee hearings:

> Throughout the hearings the committee has apparently labored under the delusion that what the country wants is permission to sop up beer and to guzzle whisky. That is far from the wishes of the men and women who for 13 years have led the fight against prohibition. As this review has repeatedly insisted, with us it is not a question of beer or of whisky but wholly a question of good government. It is our conviction that temperance in the use of alcoholic beverages is best secured through the influence on the individual of religion and of education. Should this influence fail, so that intemperance becomes a menace to the peace and good order of the community, the necessary restrictions should be made and enforced by that community. In the regulation of personal habits, inoccuous in themselves, yet subject to abuse, legislation should be the last, not the first recourse. Further, legislation, if deemed necessary, should be enforceable. Otherwise it will only enhance the evil against which it is directed.
>
> Thirteen years of sad experience have demonstrated beyond doubt that prohibition has no place in the Federal Constitution. It cannot be enforced, and it brings with it a train of graft, perjury, murder, and general disrespect for law. Any substitute amendment which fails "to restore to the States their ancient right of local self-government", as Representative BECK writes, will perpetuate these frightful abuses, together with the fundamental vice of Federal prohibition which is its incompatibility with the spirit and purposes of the Constitution.

Mr. President, it is because of the sentiments expressed in these sentences that many Senators in this body coming from dry States propose to vote for the pending bill and to vote for the repeal of the eighteenth amendment, because they are convinced, after this experiment of 13 years, that if the States themselves cannot regulate and control and suppress the illegal handling and distribution of intoxicating liquors, it is proved beyond doubt that the Federal Government cannot do it. It has failed, and they insist that we return to the several States the authority to legislate and enforce their own people's will on this question.

Mr. President, to those who cry out against the return of the saloon let me quote from another authority. It discusses the question of which is preferable, the saloon or the speak-easy.

The open saloon was a destructive force of great magnitude. It catered to human depravity, and it was the flaunting of its shamelessness to the public everywhere that brought us prohibition.

To be sure, there were all kinds of saloons, just as there are all kinds of speak-easies, and it is difficult to frame a law that would set a definite dividing line. But, admitting that the saloon was guilty of all that was charged against it, and more, too, we still have to acknowledge that the speak-easies are far worse.

They are unlawful and lawless to the last degree. There you will find the home of racketeering of the worst sort. Easy money is the tempting bait that aids and abets this criminality.

The liquor evil is with us. Prohibition has moved the saloons from the street corners into the speak-easies. And we know from bitter experience that the liquor habit cannot be crushed by law. We have learned that lesson beyond all refutation.

And the question we will doubtless have to ask ourselves at this time is: Will we have the open saloon that is lawfully controlled or will we have the speak-easy?

If we refuse to license the saloon, will it be possible to close the speak-easy?

We hear an unlimited amount of discussion as to what we must do when the Volstead law is repealed, and there is nearly always the associated warning that we must not go back to the saloon. But if we expect to close the speak-easy, what other method can be used?

If we expect to close the speakeasy, if we expect to get rid of the failure of national prohibition, what other method can we use except to return this power and authority to the States?

Some politicians are not adverse to deceiving the public, and the speak-easies are hidden away on side streets. They do not flaunt their ugliness to the general public.

It is our belief, if we are compelled to choose between the two—and that seems to be the situation—that the saloon, licensed and controlled by governmental edicts, compelled to close at certain hours, is by far the lesser of the two evils.

And this is by no means an indorsement of the saloon. God forbid! But there is no room for argument as to which is the lesser evil—the speak-easy or the saloon. There are literally hundreds of thousands of speak-easies doing business throughout the country at this time. If we have licensed saloons, they can all be closed—

Whenever and at whatever time we choose to close them—

If there are no saloons the speakeasies will undoubtedly find it profitable to remain in business.

And there seems to be no possible chance of closing them by legal measures. We know that in spite of all the efforts made through Federal and State edicts they have continued in business.

There is only one way to close them—

Only one way to close them—

and that is through legitimate competition by licensed drinking places.

Legitimate competition by licensed drinking places!

We can call them saloons, or whatever we please. No matter how much we may object to their presence, we cannot put them out of business.

They will either exist as a secret, unlawful business, or else they can be subject to close scrutiny, made to conform to certain definite rules through governmental license, which would at least materially lessen their evil influence.

There are still many who will doubtless condemn this attitude, but when we have an unpleasant situation to deal with it is foolish to close our eyes. It must be recognized and handled in the most effective manner.

We will candidly admit that all drinking places should be closed. We will go further, and admit that prohibition, if it could be enforced, would be of infinite benefit to the Nation. This we have tried for a decade or more and we have failed miserably, and when we ultimately find that we are compelled to choose between two destructive forces it is certainly desirable to select that which is the least harmful.

Mr. President, I think that presents a view of this question which is not generally considered in connection with the repeal of the eighteenth amendment or with the modification of the Volstead law.

In my own State of Massachusetts—and I know it is true in many other States of the Union—many leading citizens who have never indulged in a glass of intoxicating liquor, who in the past have been advocates of prohibition when the States had local option, are the most ardent and the most earnest and the most outspoken advocates of the repeal of the eighteenth amendment and are for the modification of the Volstead law. I repeat, their stand is based upon the solemn conviction that good government requires and necessitates this change. They are actuated by the highest patriotic motives—opposition to Federal bureaucracy, belief in State rights, and the promotion of temperance and good morals.

Mr. President, let us now come to the bill under consideration. What are we proposing to do here? We are proposing to have Congress step out of the field of prohibiting and regulating—what? Intoxicating liquor? No. We are proposing in this measure to have Congress step out of the field of prohibiting and regulating nonintoxicating liquor. Congress now is in that field. Federal administrative officers, because of the Volstead law, are now regulating nonintoxicating liquor, the Supreme Court declaring that that authority could be had in order properly to enforce the provisions of the Volstead law, which forbade the manufacture and sale of liquor containing more than one half of 1 percent of alcohol. Furthermore, it is generally conceded that this content does not fix an honest definition of intoxicating liquors. It includes nonintoxicating liquors.

What we are doing is merely taking the first step toward going back to State control, toward local self-government, the first step to get away from Federal administration and Federal control of the personal habits, the personal conduct, the personal customs, and the personal misdemeanors of the people in their several local communities. The first proposition here, therefore, is, Are we ready and willing to take Congress out of the field of prohibiting and regulating nonintoxicating liquor? Certainly nobody can doubt that that is a legitimate step and a first step for Congress to take in dealing with this subject.

Mr. President, there is and always will be a good deal of discussion as to what is intoxicating and what is not intoxicating liquor, and we might sit here for weeks and for months and hear arguments made and decisions rendered pro and con indicating that it is not one half of 1 percent that is the correct line of demarcation between nonintoxicating and intoxicating, that it is not 2, that it is not 2½, that it is not 2.75, that it is not 3, that it is not 3½, that it is not 4.

Are we to sit here and debate that question indefinitely? Is it not a fact that two committees of the Congress, the Ways and Means Committee of the House and the Judiciary Committee of the Senate, for weeks and months, argued, discussed, and studied that aspect of this question, and have presented an opinion that is within the domain of the Constitution of the United States for the Congress to modify the Volstead Act to the extent of declaring those beverages which contain less than 3.2 or 3.05 percent of alcohol nonintoxicating?

It seems to me we ought to accept that decision, and, as a matter of fact, the net result of argument upon that line will be that the drys will never concede anything more than one half of 1 percent and the wets will seek to get that degree of alcoholic content which they believe it is possible for the Supreme Court to sustain as nonintoxicating.

Mr. President, it seems to me that if we have decided that the time has come to step out of the field of the Federal Government prohibiting and regulating the sale of nonintoxicating liquors, the next thing is to vote to enact this bill and

send back to the States the authority to handle this problem. Will the States set up saloons? It is possible some of them will. The Democratic convention expressed the hope that the States would not restore the saloon. All friends of temperance would prefer some other method of handling this problem. But that is not our business, I repeat. Saloons, with all their alleged evils, are preferable to the speak-easy, which never sees the light of legal authority, or never is under the observing eye of an officer of the law or is open and doing business under any regulation or limitation.

Mr. President, with the testimony of eminent scientists and lawyers before us, it must be admitted that all that the pending bill does is to take the Federal Government out of that incidental field of enforcement of the prohibition on the beverage traffic in intoxicating liquor which has to do with nonintoxicating beverages and leave that field—the fringes of prohibition enforcement—to the States.

The enforcement of the prohibition on the beverage traffic in intoxicating liquors is, I repeat, a matter which should be left entirely to the States. Our country is too large and the temper and disposition of our people are much too varied and diverse to make possible the enforcement of any one rule of personal conduct throughout the length and breadth of the land. This is evidenced by the miserable failure of the attempt to enforce the National Prohibition Act.

One of the major difficulties in the enforcement of national prohibition has been that the act covered too broad a field, the fringes, such as the prohibition on the sale of nonintoxicating beverages. This not only created resentment amongst the citizens, increasing the problem of the Federal enforcement officers, but broadened the field of their activity so that the limited number of men available could not begin to police the country. The pending bill removes some of the public resentment, lightens the burdens of the Federal officers, and gives back to the States the power—which should never have been vested in the Federal Government—to determine how far it is necessary to police nonintoxicants in order to enforce their theories of police regulation.

Mr. President, I close by advocating this measure on four grounds: First, because national prohibition has failed; secondly, because this is the beginning of a movement which cannot be stopped to give back to the States, to give back to the people, the sole control of handling this difficult and trying problem; thirdly, in the interests of real temperance; and, fourthly, in the interest of personal liberty.

A vote for this bill is a vote for home rule against Federal bureaucracy at its worst. After this step, the repeal of the eighteenth amendment must follow.

Mr. BRATTON. Mr. President, it is not my purpose to discuss the pending measure at length nor in a controversial manner. One question and only one question is involved here, and that is whether a beverage containing 3.2 percent of alcohol by weight, which is equal to 4 percent by volume, is intoxicating. The Senator from Massachusetts [Mr. WALSH] says we are discussing the question of home rule. If a beverage containing 3.2 percent of alcohol is intoxicating, it impinges upon the Constitution of the United States, and the question of home rule does not present itself. The question of local self-government is involved when we come to vote upon the repeal of the eighteenth amendment, but not here.

Any view we take of the pending legislation brings us directly to the question of whether 3.2 is intoxicating. We might argue that question at length in this Chamber, and in the finality each Member would have his own individual opinion about it. As a member of the Judiciary Committee, I made as careful a study of that question as I was capable of making, and I have reached the conclusion that a beverage containing 3.2 alcohol is intoxicating.

It will be said that those of us on this side of the aisle are under the impelling obligation of carrying into effect the platform declaration of the Democratic National Convention held in Chicago last June. Mr. President, that declaration is to liberalize the Volstead Act as far as it can be done without trespass upon the Constitution. The message of the President delivered to the Congress only 2 or 3 days ago followed almost verbatim that platform declaration. It urges each Member of this body and of the body at the other end of the Capitol to liberalize the Volstead Act as far as it can be done without impinging upon the Constitution. Indeed, no great political party and no President would call upon anyone to vote for a measure that would violate the Constitution. So it comes back to the question of whether 3.2 alcoholic content by weight is intoxicating. Repeating, I have reached the conclusion that it is, and therefore I shall vote against the measure.

That is all I have to say about the measure. That is the only question involved. Each Member of the Senate will decide that question for himself. So let the roll be called.

Mr. DILL. Mr. President, I desire to offer an amendment to the pending measure to prohibit advertising of beverages by radio and other methods. I ask that it may be printed and lie on the table.

The PRESIDING OFFICER. The amendment will be printed and lie on the table.

Mr. BARKLEY. Mr. President, I have very little to say and I say it now only because I am compelled to leave the city at 4:30 o'clock and may not be here when the vote is cast.

Our platform pledged us to such amendment of the Volstead act as might be permissible under the Constitution. In my campaign for reelection last year I endorsed that platform and ran upon it and accepted it, stating of course, as we all did and as we all do now, that I would not knowingly vote for the legalization of any intoxicating liquor so long as the eighteenth amendment is in the Constitution.

The bill came to the Senate from the House in the last session and, in order to determine that matter, was referred to the Committee on the Judiciary. That committee reported that beer or beverages containing as much as 3.05 percent of alcohol were permissible under the Constitution. I take it for granted that after very careful consideration the Judiciary Committee reached the opinion that 3.05 was at least approximately the highest point which would be permissible under the Constitution. I recognize that even that was an expression of opinion from the Judiciary Committee itself.

In the Committee on Finance on yesterday I offered an amendment substituting 3.05 for 3.2 and that amendment was defeated in the committee. If present at the proper time I should offer that amendment on the floor on the ground that, having been referred to the Judiciary Committee and that report having been made, such a report satisfies some of the Members of the Senate who otherwise might be in doubt as to just how far they might go in legalizing any alcoholic content and at the same time remain within the Constitution of the United States.

I should vote for such an amendment if offered on the floor of the Senate and if here myself I should feel it my duty to offer it. But I may not have that privilege. I realize that there is only about one sixth of 1 percent difference between 3.05 and 3.2. It is an approximate agreement between the Judiciary Committee estimate and the Finance Committee estimate in its final action on the bill. While I would infinitely prefer that the bill follow the language of the Judiciary Committee's recommendation and fix the alcoholic content at 3.05, yet if such an amendment is offered and defeated I would, nevertheless, in view of the slight difference, feel it my duty to vote for the bill as it now is written coming from the House and from the Committee on Finance.

I am paired with the senior Senator from Iowa [Mr. DICKINSON] on this measure, and I suppose that pair will be announced when the vote is taken, but in view of my inability to be here at that time I wanted to make this statement.

Mr. BLACK. Mr. President, will the Senator yield?

Mr. BARKLEY. I yield.

Mr. BLACK. I desire to call the Senator's attention to the fact that, according to my information, in the Ju-

diciary Committee the vote was unanimous against the percentage of alcoholic content contained in the present bill, and while the report was not unanimous, because there were some who thought that even the alcoholic content recommended by the Judiciary Committee would be violative of the Constitution, yet there was a unanimous vote of the Judiciary Committee for cutting down the alcoholic content to that which appeared in its report.

Mr. BARKLEY. I do not know the facts as to the vote in the Judiciary Committee, but we do know they did make the report and that report was before the Finance Committee in the last session and it was approved by the Finance Committee in the last session without a dissenting vote. Of course in this session, when the bill was referred to the committee, the Finance Committee reversed its position on that matter and refused to lower the alcoholic content.

Mr. DILL. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Does the Senator from Kentucky yield to the Senator from Washington?

Mr. BARKLEY. I yield.

Mr. DILL. I may say to the Senator that as a member of the subcommittee which gave consideration to this question at some length, I agree with the conclusion which we reached that we could find no evidence, that we looked upon as legal evidence which could be accepted by a court, to the effect that 3.2 was not intoxicating, but we did have evidence of tests which had been made on this subject, particularly by the commission in England, that would justify anybody who would read the reports of that commission in saying that 3.05 is not intoxicating. I think that is what influenced the members of the Judiciary Committee to set that figure.

Mr. BARKLEY. Of course in order to determine whether any particular liquor bought by anyone in violation or in supposed violation of law is intoxicating, it is necessary to have it analyzed to ascertain how much alcohol it actually contains. I remember that as prosecuting attorney in my early legal experience I had great difficulty in proving that any particular beverage was actually intoxicating. Although a man might be found drunk after drinking it, the defendant was usually able to produce evidence that in addition to the particular liquor offered in evidence he had consumed other liquor which added to the intoxicability of the liquor offered in evidence. I doubt if there is any exact expert opinion in any case or any average case as to exactly how much alcohol it requires to make any given individual intoxicated.

I do not desire to detain the Senate longer. I merely desired to make my position clear.

Mr. HARRISON. Mr. President, in order to save time and try to expedite the consideration and conclusion of the bill, because we have no desire to try to keep Senators in session tonight after having had two night sessions, I desire to say that at the proper time I shall, in behalf of the committee, offer an amendment to make the alcoholic content 3.05 instead of 3.2, so we might save much discussion on that feature of the question.

Mr. CAPPER. Mr. President, I am going to vote against the pending bill, a bill which I think nullifies the Constitution, to legalize the manufacture and sale of intoxicating beverages. I believe that beer at 3.2 percent of alcoholic content is intoxicating, and its sale is a violation of the Constitution. I will not stultify myself by violating the oath which I took to support the Constitution.

I am perfectly aware of the fact that the measure is going to be passed and that it will be signed by President Roosevelt and become a law, but that does not mean that I am obliged to sit quietly here and see the Senate of the United States pass this beer bill without entering my protest.

It is a matter of regret to me that President Roosevelt has taken a position which in effect says the return of the breweries and the saloons is more important than farm relief and unemployment relief. It is difficult for me to get the viewpoint of those who believe beer more important than bread.

We are told this legislation will aid in bringing a revival of business. I am for any sound program that will get us out of the distressing business conditions which prevail throughout the country, but this measure is not going to assist in restoring prosperity to the people of the country. It will have just the opposite effect. It may yield some revenue to the Federal Treasury by taking it from the wives and children of the American workingmen, but this great Government cannot afford to take that kind of money.

We voted yesterday to take millions of dollars from the disabled veterans of our wars in order to balance the Budget and maintain the credit of the United States Government. We voted yesterday to take millions of dollars from the pockets of Federal employees in order to balance the Budget and maintain the credit of the United States Government. Today we are asked to vote for a measure that will take a thousand million dollars from the wives and children of workingmen to place perhaps $200,000,000 in the Federal Treasury.

I voted to give unprecedented dictatorial powers to President Roosevelt to deal with the problem of balancing the Budget. I did all that regretfully, somewhat doubtfully, but holding it necessary to deal drastically with a crisis that threatened the stability of the Government.

But I cannot, and I will not, vote for this measure to take bread from women and children to give profits to the brewers, even if some 30 pieces of silver may find their way into the Federal Treasury in the process.

The beer program will take money which would be spent for food and clothing and spend it upon alcoholic beverages. It will increase crime, disease, automobile accidents, and the vices which have always accompanied the saloon system, and will increase the expenses of the police and courts.

Mr. President, I do not intend to trespass longer upon the time of the Senate. I am unalterably opposed to this beer and wine measure, and in voting against it I am voicing the overwhelming sentiment of the people of Kansas, a State which has been, is now, and will continue to be uncompromising in its hostility to the liquor traffic, unyielding in its opposition to the return of the saloon in any form. We oppose the pending proposal to legalize the sale of beer because we believe it means the inevitable return of the saloon and all its attendant evils. No greater calamity could come to this Nation.

Before closing, allow me to express the hope that the new administration, after taking care of the Budget, the banks, and beer, will give us a program to attempt to take care of the unemployed and the farmer.

Mr. JOHNSON. Mr. President, I find myself under the necessity of making some little explanation of the attitude of those I represent in the State of California, with whom, of course, all Senators sympathize and for whose products they have not only a gustatory admiration but a real appreciation. I desire, sir, to make very plain the attitude of those who are engaged in grape culture in the West concerning the amendment that has been presented to this bill relating to wine. I am embarrassed in presenting their attitude because the amendment is that of my colleague [Mr. McADOO]; and because it is the amendment of my colleague, and because today he is ill and unable to be here, I do not seek to strike that amendment from the bill. I want the RECORD, however, to make perfectly plain the attitude and the position maintained by our people in northern California.

The grape growers of our State are in sympathy with this bill; they want to do nothing to interfere with its speedy passage; but they do not desire the amendment that has been placed in the bill by which the alcoholic content of the wines of California should be limited to 3.2 percent or 3.05 percent. Experience has taught them—of course I would not say that experience has taught Senators—that any wine that is fit, indeed, for use by any of those who would use it, any wine that would be utilized upon one's table would have an alcoholic content far greater than that which is suggested in the amendment.

In order that there may be no mistake in this matter I desire to insert in the RECORD certain telegrams that have come to me from the grape growers' organizations of California. Portions of one or two I read so that Senators may understand.

We are not—

Says the director of the Grape Growers' League of California—

playing dog-in-manger tactics by holding up beer bill. No wine advocate ever suggested silly, evasive 3 percent wine provision. It is veriest sop and means nothing, as there is no such naturally fermented table wine possible of manufacture in the United States or anywhere. If we cannot amend by including 10 percent alcoholic content of wine by weight, we insist on no mention of wine in bill, as it is false compromise, to which we do not agree.

I have taken up with members of the committee and with the distinguished chairman, who is in charge of this bill, whether an amendment of the kind suggested by this organization could be inserted in the bill, and he assures me that there is no possibility of it. I do not, therefore, present such an amendment, nor do I attempt to argue it, because I do not want to delay by a single instant the consummation that he seeks here on this particular occasion.

I read from another telegram just a word:

In view of President Roosevelt's message today we cannot too strongly urge action on your part in line with our previous telegram for inclusion of naturally fermented light wines in any beer legislation. Senate bill permitting 3.05 percent wine is inadequate, because there is no such wine. It excludes naturally fermented wines which are now legal under section 29 of the Volstead Act.

Were I disposed to be didactic at all, and argue the legal propositions that have been so well presented and at such length today, I would like to descant upon section 29 for a brief period, but I forego that pleasure; I save Senators that infliction. Nevertheless the attitude of our people in respect to the matter the very mention of the section will enable the Senate adequately to understand.

So, Mr. President, my colleague being ill today and unable to be here—and let that stand, please, as an announcement for the day—the amendment being his, and inasmuch as he insists upon it, I do not attempt to interfere with it; but I do make plain to the Senate, and I do make plain to those in charge of this bill, and if there be a conference upon it to those who will sit in the conference, that the amendment relating to wine is not desired by those I represent, who constitute, indeed, the greatest of grape-growing sections of the United States.

Mr. BARKLEY. Mr. President, will the Senator from California yield to me?

Mr. JOHNSON. Yes.

Mr. BARKLEY. I will say, while in the committee, this amendment was offered at the suggestion of the junior Senator from California [Mr. MCADOO], it was not understood by the committee, as I recall, as necessarily or by implication infringing upon the practice that is now indulged in by the people of California, for if, as a matter of fact, with the present limitation in the law of one half of 1 percent they are making wine with 10 or 12 percent alcoholic content, it would hardly be expected they would reduce the content when the legal limit is raised to 3.2 percent.

Mr. JOHNSON. Exactly.

Mr. BARKLEY. But there were certain representations made to the committee to the effect that there was a type of beverage known as "wine" made by others which could be successfully made and preserved with the alcoholic content legalized by the bill.

Mr. JOHNSON. Yes; I was so told.

Mr. BARKLEY. I wanted to state that in the absence of the junior Senator from California.

Mr. JOHNSON. I recognize that, but a beverage thus made with such an alcoholic content, may I say very solemnly and impressively to my friend from Kentucky, is not California wine. [Laughter.]

Mr. BARKLEY. Of course I am not an expert on California wine or any other wine, but we all know that no product of California is indigeneous to the soil of any other State or any other part of the world. [Laughter.]

Mr. JOHNSON. I would not, of course, contradict the statement of my friend, but after the passage of the legislation, after this session, and after this "new deal", I do hope we may educate him in the matter of our California wines.

[Laughter.]

Mr. President, I ask unanimous consent to have inserted in the RECORD at this point in my remarks the telegrams to which I have referred.

There being no objection, the telegrams were ordered to be printed in the RECORD, as follows:

SAN FRANCISCO, CALIF., *March 15, 1933.*

Senator HIRAM W. JOHNSON,
United States Senator:

We are not playing dog-in-manger tactics by holding up beer bill. No wine advocate ever suggested silly, evasive 3 percent wine provision. It is veriest sop and means nothing, as there is no such naturally fermented table wine possible of manufacture in United States or anywhere. If we cannot amend by including 10 percent alcoholic content of wine by weight we insist on no mention of wine in bill, as it is false compromise to which we do not agree. Is it possible to get agreement in Senate to approve separate wine bill of practical alcohol content? We are prepared to defend any court action touching its constitutionality. LEA is prepared to introduce separate wine bill in House. This proposed sop does not mean anything to second largest California industry, with 350 millions investment and affecting livelihood of over 100,000 people. There is strong backing of our stand in New York, Pennsylvania, Ohio, New Jersey, and other States. Unless can get support for separate wine bill, please make contest for amendment present bill in practical way to include wine 10 percent by weight.

E. M. SHEEHAN,
Director Grape Growers' League of California.

SAN FRANCISCO, CALIF., *March 13, 1933.*

Hon. HIRAM JOHNSON,
Senate Office Building, Washington, D.C.:

In view of President Roosevelt's message today we cannot too strongly urge action on your part, in line with our previous telegram, for inclusion of naturally fermented light wines in any beer legislation. Senate bill permitting 3.05 percent wine is inadequate because there is no such wine. It excludes naturally fermented wines which are now legal under section 29 of the Volstead Act for home manufacture and consumption and require only congressional action to become legal for general use.

S. FEDERSPIEL,
Grape Growers' League of California.

SAN FRANCISCO, CALIF., *March 16, 1933.*

Hon. HIRAM JOHNSON,
Capitol, care Secretary:

Absolutely imperative must kill 3.2 wine from beer bill. If accept this fraud it will ruin all chance for natural light wine bill. Public simply cannot understand; there is no such wine as 3.2. Suffering grape growers throughout California feel 3.2 not only fails give them relief but will prevent relief this session. Kill 3.2 wine, letting beer alone pass.

S. FEDERSPIEL,
President Grape Growers' League of California.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the Senate by Mr. Latta, one of his secretaries.

AGRICULTURAL RELIEF (H.DOC. NO. 5)

The PRESIDING OFFICER (Mr. GEORGE in the chair). The Chair lays before the Senate a message from the President of the United States, which will be read.

The Chief Clerk read as follows:

To the Congress:

At the same time that you and I are joining in emergency action to bring order to our banks, and to make our regular Federal expenditures balance our income, I deem it of equal importance to take other and simultaneous steps without waiting for a later meeting of the Congress. One of these is of definite constructive importance to our economic recovery.

It relates to agriculture and seeks to increase the purchasing power of our farmers and the consumption of articles manufactured in our industrial communities; and at the same time greatly to relieve the pressure of farm mortgages

and to increase the asset value of farm loans made by our banking institutions.

Deep study and the joint counsel of many points of view have produced a measure which offers great promise of good results. I tell you frankly that it is a new and untrod path, but I tell you with equal frankness that an unprecedented condition calls for the trial of new means to rescue agriculture. If a fair administrative trial of it is made and it does not produce the hoped-for results, I shall be the first to acknowledge it and advise you.

The proposed legislation is necessary now for the simple reason that the spring crops will soon be planted, and if we wait for another month or 6 weeks the effect on the prices of this year's crops will be wholly lost.

Furthermore, by action at this time, the United States will be in a better position to discuss problems affecting world crop surpluses at the proposed world economic conference.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE, *March 16, 1933.*

The PRESIDING OFFICER. The message from the President of the United States will be printed and referred to the Committee on Agriculture and Forestry.

AMENDMENT OF THE VOLSTEAD ACT

The Senate resumed the consideration of the bill (H.R. 3341) to provide revenue by the taxation of certain nonintoxicating liquor, and for other purposes.

Mr. NORRIS. Mr. President, I am not prepared to make any analysis of the pending beer bill. As the Senate knows, I have been absent in attendance upon the funeral of my late colleague, so that I have had no opportunity to examine the bill. Neither is it my intention, Mr. President, to tell the Senate why I am in favor of some legislation on this question. I have done that previously and I will not go into it again. I would have said nothing at all had it not been for some of the remarks that have been made here in regard to the bill that was reported by the Judiciary Committee at the last session of Congress. My own idea is that the Senate is making a mistake in not enacting into law the bill which the committee then reported. I am satisfied that that bill met the constitutional requirements and that there would have been no danger so far as the constitutional question is concerned had it been enacted into law.

I assumed, from what I read in the newspapers while I was away, that when the House sent another bill on the subject to this body the Senate would do the same as it did before, and that the Judiciary Committee bill would be substituted for the one now pending. In fact, I was informed, Mr. President, at the last session of Congress by some Members of the House who were instrumental in passing the first bill of this character which the House sent here, that undoubtedly if the Senate amended the bill by substituting the Judiciary Committee bill, it would be approved by the House, and that those who had studied it were in favor of taking that action.

To my mind, Mr. President, it is possible for us to enact a law that will have the effect of legalizing the sale of beer and wine without any reference whatever to alcoholic content.

The amendment to the Constitution uses the words "intoxicating liquors." Everybody will concede, I believe, that from a legal standpoint, if Congress passed no law whatever designed to carry into effect that constitutional provision, there would be no penalty, so far as any Federal statute is concerned, against the sale of intoxicating liquors of any kind. There would be no penalty for their transportation, for their manufacture, or for their importation. In other words, the constitutional provision is not self-executing. It requires a statute to give it any effect.

There being a great many kinds of intoxicating liquor, there is not any question in my mind but that Congress could pass a perfectly constitutional act fixing different punishments, different penalties, for the sale of different kinds of intoxicating liquors. It could provide, for instance, imprisonment for the sale of whisky, and provide for the payment only of a fine for the sale of beer. It could provide for a different punishment for the sale of wine. In other words, this constitutional provision must have some statutory penalty attached in order to make any of these various things effective. So, in my judgment, if we passed a law fixing a penalty for the sale of distilled spirits, and said nothing about beer, malt liquors, or vinous liquors, the effect of our statute would be to make illegal the sale of distilled spirits and to punish by the proper penalty anyone who violated the statute; and the only place where there would be a punishment would be, in that case, for the sale of distilled spirits. That being true, it would be very easy to amend the present Volstead Act by eliminating beer from it; and then there would be no penalty for the sale or importation or manufacture of beer, regardless of its alcoholic content.

There is not any doubt, either, but that under that constitutional provision Congress would have the right, if it chose to do so, to fix a different penalty for a man who sold whisky or beer or wine having an alcoholic content, let us say, if it were wine, of 15 percent, than though the wine he sold had an alcoholic content of only 10 percent. We could modify the punishment according to the alcoholic content of the intoxicating liquor sold.

So it seems to me that if we want to avoid any constitutional question we could remain silent on the question of beer, we could remain silent on the question of wine, and we would have accomplished what we want to accomplish, with perhaps this exception:

If there were an executory contract not carried out for the purchase of beer, let us say, and the statutes of the Federal Government said nothing about beer, it probably would be impossible to enforce that contract. In other words, I think it would be possible then to set up the constitutional provision itself which makes it illegal; and perhaps the result would be, if we had that kind of a law, that people buying the various kinds of liquors that were not punishable by statute would always have to pay cash in order to get them.

Mr. REED. Mr. President, may I suggest to the Senator another way in which the amendment would operate by itself?

Mr. NORRIS. I shall be glad to have the Senator do so.

Mr. REED. That is in regard to importations of such articles. If the eighteenth amendment stood alone, without an enforcement act, I doubt whether the Federal customs authorities could lawfully grant a clearance certificate for the importation of such articles.

Mr. NORRIS. That may all be. In fact, I am inclined to think that would be true. It would be another instance like I have mentioned, where there might be an executory contract not complied with. Nobody could compel fulfillment of a contract that the Constitution said was illegal, in other words; but the real thing that would be brought about by that kind of a procedure would be the manufacture and sale of beer and wine.

Mr. President, when we come to the question of intoxication, when we come to enacting a law based for its validity upon the alcoholic content of the beverage that we are going to regulate, then we have another question presented. Then if the alcoholic content is too high there is danger that it will be held unconstitutional.

The Judiciary Committee took both of those questions into consideration; and the law we drafted there, I think, without regard to alcoholic content, would have been sustained by any court in the land. But to satisfy those who wanted legislation on the question of beer, for instance, we fixed the alcoholic content at 3.05 percent; and that figure, Mr. President, was brought about, I think, by the most exhaustive and scientific study of the question that has ever been made in the history of the world.

The Judiciary Commitee had before it the result of the study made in Great Britain, and the conclusion reached by men who had no interest on one side or the other, but purely from a scientific standpoint, that that was the point

beyond which we could not go without making the beverage intoxicating. As I understand the argument made here, and the explanation so far made of this bill in my hearing, it depends for its validity upon the point that the beverage provided for must not be intoxicating. A court would go a great way in taking our statement and our declaration in the law that such-and-such was intoxicating, and such was not intoxicating; but, in my judgment, it would not be final if we were unreasonable about it, if we went away beyond the danger line, the indefinite line that every student knows is indefinite, that may be intoxicating for one man and not for another. Whether or not a beverage is intoxicating, perhaps, depends on how soon it is consumed, and the bulk of it, and upon the condition of the individual. These tests were made by examination of the blood to show what was intoxicating and what was nonintoxicating.

I reached the conclusion, and I believe every member of the Judiciary Committee did, from that analysis, that an alcoholic content of 3.2 percent was intoxicating; that it was over on the other side of this line; and that 3.05 percent was not intoxicating. We realize that that is not a straight line, Mr. President. There is a dispute, and I take it that the Supreme Court will not reject the judgment of the legislative body if we stay within that danger line. We do not go so far as to be unreasonable.

Some scientific men say, it is true, that 3.2 percent of alcohol makes a beverage intoxicating. Personally—and I do not believe I had any prejudice about it—I reached the conclusion that the Senator from New Mexico did. I want to say that the same conclusion was reached by the Senator from Wisconsin, Mr. Blaine, who is not a Member of the Senate now, but was then; and we all know that he was one of the hardest workers, one of the best lawyers, one of the best minds in the Senate. He reached that conclusion, and he made a thorough study of the matter. He talked with the experts. He went into the question as fully, I think, as anyone possibly could go into it.

Therefore, Mr. President, without being very familiar with the details of this bill, I think that if it depends upon the alcoholic content of the beverage for its constitutionality, to be safe we ought to agree to the amendment that the Senator from Mississippi [Mr. HARRISON] said he was going to offer, to change the content to 3.05 percent. That may make the bill constitutional. It does not meet my idea of what we ought to do in legislating on this subject; and let me say, Mr. President, that I am speaking myself from a prohibition standpoint. I have been a prohibitionist all my life. I have fought on this question on many a battlefield in many a State. I am a prohibitionist because I believe in prohibition, and I supported most enthusiastically the amendment to the Federal Constitution, as I supported an amendment to the constitution of my own State, and as I supported various other laws that we had from time to time. I thought and I believed firmly that when the Federal Constitution amendment on intoxicating liquor was agreed to the question was practically settled, and that it would be but a few years until we would have no more trouble with the matter.

Now, however, as much as we usually regret to admit that we have been wrong, I think the evidence is so overwhelming, so mounting, so great, that against my own will and my own wish I have had to yield and realize that I have been wrong. I do not know whether this is going to work or not. I have listened to some of the very able addresses that have been delivered in the Senate and elsewhere to the effect that the way to settle the prohibition question was to permit the manufacture and sale of beer and light wine. I did not take much stock in that argument for a year or two, until I became convinced that absolute prohibition as we had it had turned out to be a failure. I thought then that I was willing, and I am now willing, to see whether this will be successful.

That, Mr. President, is the reason why I opposed the adoption of the constitutional amendment repealing the eighteenth amendment—because I wanted to test it. I wanted to see whether this kind of a law would relieve the situation. If it does, then we ought to have it permanently; and if we have it permanently we will need the eighteenth amendment just as it stands now.

So I am going to take this measure in the hope that it will improve present conditions. If it does, it seems to me it is a step in the direction of prohibition.

Mr. ASHURST. Mr. President, I had expected briefly to address the Senate on this subject; but the Senator from Nebraska [Mr. NORRIS] has spoken so much better than I could, and speaks from such a wealth of legal lore, that it is unnecessary for me to say anything more than he has said.

I agree with him in toto; and I simply add what he omitted to say, that former Senator Blaine was the chairman of the Subcommittee on the Judiciary Committee. I can testify that during my experience here no subject of legislation was ever more painstakingly, carefully investigated than was this very subject by the subcommittee and by the main committee.

I ask Senators to read the report, No. 1105, Seventy-second Congress, submitted to the Senate by former Senator Blaine.

Mr. WALSH. It is very voluminous.

Mr. ASHURST. It is voluminous, and discloses that the Judiciary Committee had before it and studied the results and report of the English advisory scientific committee upon the physiological action of alcohol on the human organism.

I do not say that the percentage of alcohol named in this bill reported to us from the Finance Committee would render the beverage intoxicating; but the Senator from Nebraska [Mr. NORRIS] has sounded a note of warning to which all prudent men who seek to secure for the Government the needed revenue raised by this bill should listen.

Why choose the path of uncertainty? Why choose the course of doubtful constitutionality, when by adhering to the figure of the bill reported to us in the last session from the Judiciary Committee much uncertainty may be avoided?

Mr. PATTERSON. Mr. President, Congress recently submitted to the States an amendment to the Constitution to repeal the eighteenth amendment. I voted for such submission. The Constitution of the United States belongs to the people thereof and whenever there appears to be a legitimate and widespread demand for a change in that instrument the people have a right to have the matter submitted to them, that they themselves may pass on the fundamental law of their own Government. When it appears that there is a legitimate and widespread demand for a change in the Constitution, I believe that it is the duty of a representative in Congress to vote to submit such proposed change, irrespective of his personal views on the subject. To deny the people the right to pass on their own fundamental law amounts to legislative tyranny, to which I cannot subscribe.

The action of Congress in submitting the repeal proposal does not affect the validity of the eighteenth amendment unless such proposal is ratified by three fourths of the States. The eighteenth amendment is still a part and parcel of the Constitution, and will so remain until changed by the orderly process provided by the Constitution. Congress itself can neither alter nor repeal the eighteenth amendment nor any other part of the Constitution. It can only submit a proposal to this effect to the States for their approval or disapproval.

Congress may submit proposals to change the Constitution either to the legislatures of the various States or to conventions to be called therein. The recent proposal was submitted to conventions in accordance with the platform pledge of both the Republican and Democratic Parties. Delegates to these conventions will be chosen by the people of the various States, and thus the question of the retention or repeal of the eighteenth amendment is now in the hands of the people themselves.

Although the eighteenth amendment is a part of the Constitution, it is now proposed, through H.R. 3341, to enact legislation legalizing the manufacture and sale of beverages of alcoholic content of 3.2 percent. This is approximately the same alcoholic content of the beer made and sold

previous to the adoption of the eighteenth amendment, which every informed person knows was intoxicating.

That the beverage it is now proposed to legalize is intoxicating will hardly be seriously questioned. This fact is established by the provisions of the bill itself. This bill forbids the transportation of the proposed beverage into what are known as "dry" States and forbids the issuance of any permit to manufacture such beverage in any dry State. The bill further provides that whoever orders, purchases, or causes any of the beverages it is proposed to legalize to be transported into any dry State shall be fined not more than $1,000 or imprisoned not more than 6 months, or both, and for any subsequent offense shall be imprisoned for not more than 1 year. If the beverage it is proposed to legalize were not intoxicating, there would be no occasion for the restrictions and penalties imposed in the pending bill. The provisions of the proposed legislation clearly indicate that the beverage it is proposed to legalize would be intoxicating in fact. Having come to this conclusion and having a due regard for my oath of office, I cannot vote for this bill.

As I have previously stated, the eighteenth amendment is still a part of the Constitution. This amendment in part reads as follows:

> * * * the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Let me now quote the oath each Senator and Representative in Congress is required to take on assuming the duties of his office:

> I do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office on which I am about to enter, so help me God.

In view of the fact that the eighteenth amendment is still a part of the Constitution, it is obvious that the manufacture and sale of any intoxicants for beverage purposes would be in violation thereof. In view of the oath I have taken and the conclusion I have reached as to the character of the beverage it is proposed to legalize, I cannot vote for this measure.

If one part of the Constitution can be lightly set aside and laws enacted in violation thereof, then other parts can be ignored and violated with impunity. As a result, this charter of American liberty which has served us so well throughout our history would, in time, become a meaningless instrument.

I refuse to contribute to any such result, and during my term in the Senate I shall not knowingly vote for any legislation that violates any part of the Constitution of the United States. When fully understood, such a course, I am sure, will have the hearty approval of the American people.

Mr. GOLDSBOROUGH. Mr. President, a few days ago, when the joint resolution for the repeal of the eighteenth amendment was pending before the Senate, I voted for the amendment offered by the Senator from Virginia, believing it to be in accord with the mandate contained in the platform of the Republican Party offered to the electorate last fall. That amendment being defeated, I then voted against the joint resolution on final passage, as I have been consistently opposed to naked repeal of the eighteenth amendment. The matter of the repeal of the eighteenth amendment is now up to the 48 States, and I am willing to await that decision.

In the meantime I believe it would be impossible for me to cast my vote for House bill 3441, as to do so would, in my judgment, most distinctly violate the oath which I took to uphold the Constitution when I became a Member of this body. This proposed legislation by its title is an attempt "to provide revenue by the taxation of certain nonintoxicating liquors," and yet it authorizes the manufacture and sale of beer and light wines to contain a maximum of not more than 3.2 percent of alcohol, or, in accordance with an amendment to be offered, 3.05 percent.

If a beverage containing 3.05 percent of alcohol is not intoxicating to a greater or less degree, its power to raise revenue will be nil, as no one desiring spirituous beverages would purchase it. On the other hand, if it is intoxicating, then it is most clearly in violation of the Constitution, which now prohibits the manufacture, sale, or distribution of intoxicating liquors within its borders.

Any attempt to raise additional revenue through the sale of nonintoxicating beverages is so obviously a fallacy that it needs no argument.

Under the present circumstances it would be a futile thing for any Member of Congress to vote against a measure designed to meet a change in public sentiment, and particularly one which is a part of a program to end agitation and bring about a settled condition of affairs in this country, if it could be done properly and legally. The Seventy-second Congress voted to submit the repeal of the eighteenth amendment to the States by convention, and until the people's will in the matter is properly recorded I believe it to be ill-advised to support a measure which, in my judgment, is a violation of the Constitution.

Mr. HARRISON. Mr. President, because the matter runs throughout the committee amendments, and we might as well settle it now, I desire to offer an amendment in behalf of the committee, on page 1, line 7, where the figures "3.2" occur, to make it read "3.05".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. HARRISON. Mr. President, I ask that wherever the figures "3.2" appear in the bill it be made "3.05", in accordance with the action just taken.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The clerk will state the next amendment.

The next amendment was, on page 2, line 1, before the word "may", to insert "or fruit juices"; on the same page, in line 10, after the word "porter", to strike out "or other similar fermented liquor" and insert "wine, similar fermented malt or vinous liquor, or fruit juice"; on page 3, line 1, after "(c)", to strike out "all special tax and administrative provisions of the internal revenue laws in respect of beer, ale, porter, or other similar fermented liquor shall be applicable in respect of the liquor taxable under subsection (a)" and insert "Nothing in this act shall be construed as repealing any special tax or administrative provision of the internal revenue laws applicable in respect of any of the following containing one half of 1 percent or more of alcohol by volume, and not more than 3.2 percent of alcohol by weight: Beer, ale, porter, wine, similar fermented malt or vinous liquor, or fruit juice," so as to make the section read:

> *Be it enacted, etc.*, That (a) there shall be levied and collected on all beer, lager beer, ale, porter, wine, similar fermented malt or vinous liquor, and fruit juice, containing one half of 1 percent or more of alcohol by volume, and not more than 3.05 percent of alcohol by weight, brewed or manufactured and, on or after the effective date of this act, sold, or removed for consumption or sale within the United States, by whatever name such liquors or fruit juices may be called, a tax of $5 for every barrel containing not more than 31 gallons, and at a like rate for any other quantity or for the fractional parts of a barrel authorized and defined by law, to be collected under the provisions of existing law. The tax imposed by this section upon any beverage shall, if any tax is now imposed thereon by law, be in lieu of such tax from the time the tax imposed by this section takes effect. Nothing in this section shall in any manner affect the internal-revenue tax on beer, lager beer, ale, porter, wine, similar fermented malt or vinous liquor, or fruit juice, containing more than 3.05 percent of alcohol by weight, or less than one half of 1 percent of alcohol by volume. As used in this section, the term "United States" includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.
>
> (b) Paragraph "First" of section 3244 of the Revised Statutes (U.S.C., title 26, sec. 202) is amended to read as follows:
>
> "First. Brewers shall pay $1,000 in respect of each brewery. Every person who manufactures fermented liquors of any name or description for sale from malt, wholly or in part, or from any

substitute therefor, containing one half of 1 percent or more of alcohol by volume, shall be deemed a brewer."

(c) Nothing in this act shall be construed as repealing any special tax or administrative provision of the internal revenue laws applicable in respect of any of the following containing one half of 1 percent or more of alcohol by volume and not more than 3.05 percent of alcohol by weight: Beer, ale, porter, wine, similar fermented malt or vinous liquor, or fruit juice.

The amendments were agreed to.

Mr. HATFIELD. Mr. President, for the RECORD and for the information of the Senate, I wish to read from a manuscript made in the way of a report by Dr. Walter R. Miles as to his investigation of the effect of alcohol on human efficiency. He made experiments with moderate quantities and dilute solutions of ethyl alcohol on human subjects. I shall detain the Senate for a very brief period only.

Dr. Miles' preparation of the subject was, first, 2 series of experiments made on 1 typist to find whether the subject would demonstrate substantially the same effect of alcohol in a duplicate series. The dosage and food conditions were the same in both experiments, but in 1 case the experiment continued 3 hours and in the other 5 hours.

In the class B cases 2 series of experiments were made on each of 2 subjects, the dosage and general conditions being the same, except that in the second series the alcohol was taken very shortly after a full meal eaten at the laboratory. This arrangement was specifically to measure the influence of the food on the effective intensity of the alcohol ingested. The result was in keeping with the statement, from which I shall read, made by Dr. Miles:

A. Five series of experiments were made, in each of which there were several control and alcohol days. The amount of alcohol ingested was always the same (27.5 grams)—

A little less than an ounce of alcohol—

and was taken with the same degree of dilution (2.75 percent by weight). Various beverages were used as dilutants, these being water, beer substitute, grape juice, and cider. A wide variety of neuro-muscular tests were employed, in all of which the subject had had much previous practice.

I read further:

Urine samples were regularly collected at half-hour intervals and analyzed for alcohol content, so that the relative amount of alcohol in the body fluids might be correlated with the intensity of the alcohol effect. A standard amount of food was always taken a certain length of time (2 hours) prior to the ingestion of the 1-liter dose. The control days duplicated the content and volume of the alcohol dose in each series except for the omission of the alcohol.

Mr. President, for the purpose of comparing the nerve reactions in the nonalcohol days with the reactions on those days when the alcohol control was used in the beverage, I read from page 275 of the same text as follows, this being the conclusion of Dr. Miles:

There is no longer room for doubt in reference to the toxic action of alcoholic beverages as weak as 2.75 percent by weight. If 27.5 grams of alcohol are taken in this form, the well-defined and measurable depression in physical and mental processes, judged within the limits of this investigation, is not far short of the result found when 21 to 28 grams of alcohol are taken in solution varying from 14 to 22 percent.

To me this is conclusive evidence, based upon experiments carried on by a scientific man, who has his Ph.D. degree, with a degree of M.D. from one of the great universities of this country, taking for his subjects men who were well developed muscularly and mentally and who were graduates from college. The result, as Dr. Miles has expressed it, in my judgment, is conclusive with reference to even the small amount of alcohol found in 2.75 beer.

Mr. President, we have often heard the statement made on the floor of the Senate about the results of caffeine upon the human system, comparing its action with that of alcohol. From a technical standpoint I may say that caffeine is a vasomotor constrictor as compared with alcohol being a vasomotor dilator. In other words, caffeine constricts the nerve supply to the blood vessels of the body, while alcohol acts in the opposite direction and dilates the blood vessels by its action upon the nerve supply to the blood vessels of the body.

Mr. President, this is all I care to say upon the subject as to the effect of small doses of alcohol on the human system.

Whatever may be my personal inclination or position upon the subject of prohibition, I feel that I am controlled by the fundamental laws of the State which I represent in part. When I read into the CONGRESSIONAL RECORD a paragraph taken from the constitution of West Virginia, I feel that everyone within the sound of my voice will agree with me that there is only one course for me to take and at the same time respect the constitution of the State which I represent in part in this body. I read:

On and after the 1st day of July, 1914, the manufacture, sale, and keeping for sale of malt, vinous, or spiritous liquors, wine, porter, ale, beer, or any intoxicating drink, mixture, or preparation of like nature, except as hereinafter provided, are hereby prohibited in this State: *Provided, however,* That the manufacture and sale and keeping for sale of such liquors for medicinal, pharmaceutical, mechanical, sacramental, and scientific purposes, and the manufacture and sale of denatured alcohol for industrial purposes, may be permitted under such regulations as the legislature may prescribe. The legislature shall, without delay, enact such laws, with regulations, conditions, securities, and penalties as may be necessary to carry into effect the provisions of this section.

Mr. President, it is my duty, as I see it, to vote against the passage of this measure; and therefore, when my name is called, I shall register my vote against its passage.

The PRESIDING OFFICER. The clerk will state the next amendment.

The next amendment of the Committee on Finance was, on page 3, line 12, after " Sec. 2 ", to strike out:

The following portions of the National Prohibition Act, as amended and supplemented, insofar as they relate to beer, ale, porter, or other similar fermented liquor, are hereby repealed:

(a) The second paragraph of section 37 of title II (U.S.C., title 27, sec. 58).

(b) The fourth or last paragraph of section 37 of title II (U.S.C., title 27, sec. 60).

And insert:

The second, third, and fourth paragraphs of section 37 of title II of the National Prohibition Act, as amended and supplemented (U.S.C., title 27, secs. 58, 59, and 60), are hereby repealed.

So as to make the section read:

SEC. 2. The second, third, and fourth paragraphs of section 37 of title II of the National Prohibition Act, as amended and supplemented (U.S.C., title 27, secs. 58, 59, and 60), are hereby repealed.

The amendment was agreed to.

The next amendment was, on page 4, line 2, after the word " porter ", to strike out " or other similar fermented liquor " and insert " wine, similar fermented malt and vinous liquor, or fruit juice," and on page 5, line 10, after the word " porter," to strike out " or other similar fermented liquor " and insert " wine, similar fermented malt or vinous liquor, or fruit juice," so as to make the section read:

SEC. 3. (a) Nothing in the national prohibition act, as amended and supplemented, shall apply to any of the following, or to any act or failure to act in respect of any of the following, containing not more than 3.05 percent of alcohol by weight: beer, ale, porter, wine, similar fermented malt and vinous liquor, or fruit juice; but the National Prohibition Act, as amended and supplemented, shall apply to any of the foregoing, or to any act or failure to act in respect of any of the foregoing, contained in bottles, casks, barrels, kegs, or other containers, not labeled and sealed as may be prescribed by regulations.

(b) The following acts and parts of acts shall be subject to a like limitation as to their application:

(1) The act entitled "An act to prohibit the sale, manufacture, and importation of intoxicating liquors in the Territory of Hawaii during the period of the war, except as hereinafter provided ", approved May 23, 1918 (U.S.C., title 48, sec. 520);

(2) Section 2 of the act entitled "An act to provide a civil government for Puerto Rico, and for other purposes ", approved March 2, 1917;

(3) The act entitled "An act to prohibit the manufacture or sale of alcoholic liquors in the Territory of Alaska, and for other purposes ", approved February 14, 1917 (U.S.C., title 48, secs. 261 to 291, both inclusive).

(c) Nothing in section 5 of the act entitled "An act making appropriations for the service of the Post Office Department for the fiscal year ending June 30, 1918, and for other purposes ", approved March 3, 1917, as amended and supplemented (U.S.C., title 18, sec. 341; supp. VI, title 18, sec. 341), shall prohibit the deposit in or carriage by the mails of the United States, or the delivery by any postmaster or letter carrier of any mail matter containing any advertisement of, or any solicitation of an order or orders for, any of the following containing not more than 3.05 percent of alcohol by weight: beer, ale, porter, wine, similar fermented malt or vinous liquor, or fruit juice.

The amendment was agreed to.

The next amendment was, on page 5, line 13, after the word "porter", to strike out "or other similar fermented liquor" and insert "wine, similar fermented malt or vinous liquor, or fruit juice"; in line 23, after the word "such", to strike out "fermented liquor" and insert "fermented malt or vinous liquor or fruit juice"; on page 6, line 3, after the word "of", to strike out "fermented liquor" and insert "fermented malt or vinous liquor or fruit juice"; on page 6, line 9, after the word "such", to strike out "fermented liquor" and insert "fermented malt or vinous liquor or fruit juice"; in line 16, after the word "liquor," to insert "or fruit juice"; in line 19, after the word "such", to strike out "fermented liquor" and insert "fermented malt, or vinous liquor, or fruit juice"; in line 21, after the word "fermentation," to insert "and fortification"; in line 22, after the word "ale," to strike out "or porter" and insert "porter, wine, or fruit juice"; on page 7, line 9, after the word "extraction", to insert "such liquids may be developed, under permit under the National Prohibition Act, as amended and supplemented, by persons other than manufacturers of beverages containing not more than 3.05 percent of alcohol by weight, and sold to such manufacturers for conversion into such beverages"; on page 7, line 17, after the word "liquors," to insert "credit shall be allowed on the tax due on any alcohol so saved to the amount of any tax paid upon distilled spirits or brandy used in the fortification of the liquor from which the same is saved"; on page 7, after line 20, insert:

(3) When fortified wines are made and used for the production of nonbeverage alcohol, and dealcoholized wines containing not more than 3.05 percent of alcohol by weight, no tax shall be assessed or paid on the spirits used in such fortification, and such dealcoholized wines produced under the provisions of this section, whether carbonated or not, shall be subject to the tax imposed by section 1.

On page 8, line 4, before the word "in", to strike out "(3)" and insert "(4)"; in line 6, after the word "porter," to strike out "or other similar fermented liquor" and insert "wine, similar fermented malt or vinous liquor, or fruit juice"; in line 13, after the word "ale," to strike out "or porter" and insert "porter, wine, or fruit juice"; and on page 9, line 2, after the word "porter," to strike out "or other similar fermented liquor" and insert "wine, similar fermented malt or vinous liquor, or fruit juice," so as to make the section read:

SEC. 4. (a) The manufacturer for sale of beer, ale, porter, wine, similar fermented malt or vinous liquor, or fruit juice, containing one half of 1 percent of alcohol by volume and not more than 3.05 percent of alcohol by weight, shall, before engaging in business, secure a permit authorizing him to engage in such manufacture, which permit shall be obtained in the same manner as a permit under the National Prohibition Act, as amended and supplemented, to manufacture intoxicating liquor, and be subject to all the provisions of law relating to such a permit. Such permit may be issued to a manufacturer for sale of any such fermented malt or vinous liquor or fruit juice, containing less than one half of 1 percent of alcohol by volume, if he desires to take advantage of the provisions of paragraph (2) of subsection (b) of this section. No permit shall be issued under this section for the manufacture of fermented malt or vinous liquor or fruit juice in any State, Territory, or the District of Columbia, or political subdivision of any State or Territory, if such manufacture is prohibited by the law thereof.

(b) (1) Such permit shall specify a maximum alcoholic content permissible for such fermented malt or vinous liquor or fruit juice at the time of withdrawal from the factory or other disposition, which shall not be greater than 3.05 percent of alcohol by weight, nor greater than the maximum alcoholic content permissible under th elaw of the State, Territory, or the District of Columbia, or the political subdivision of a State or Territory, in which such liquor or fruit juice is manufactured.

(2) In such permit may be included permission to develop in the manufacture of such fermented malt, or vinous liquor, or fruit juice by the usual methods of fermentation and fortification or otherwise a liquid such as beer, ale, porter, wine, or fruit juice of an alcoholic content in excess of the maximum specified in the permit; but before any such liquid is withdrawn from the factory or otherwise disposed of the alcoholic content shall, if in excess of the maximum specified in the permit, be reduced, under such regulations as may be prescribed, to or below such maximum; but such liquid may be removed and transported, under bond and under such regulations as may be prescribed, from one bonded plant or warehouse to another for the purpose of having the percentage of alcohol reduced to the maximum specified in the permit by dilution or extraction. Such liquids may be developed, under permit under the National Prohibition Act, as amended and supplemented, by persons other than manufacturers of beverages containing not more than 3.05 percent of alcohol by weight, and sold to such manufacturers for conversion into such beverages. The alcohol removed from such liquid, if evaporated, and not condensed and saved, shall not be subject to tax; if saved, it shall be subject to the same law as other alcoholic liquors. Credit shall be allowed on the tax due on any alcohol so saved to the amount of any tax paid upon distilled spirits or brandy used in the fortification of the liquor from which the same is saved.

(3) When fortified wines are made and used for the production of nonbeverage alcohol, and dealcoholized wines containing not more than 3.05 percent of alcohol by weight, no tax shall be assessed or paid on the spirits used in such fortification, and such dealcoholized wines produced under the provisions of this section, whether carbonated or not, shall be subject to the tax imposed by section 1.

(4) In any case where the manufacturer is charged with manufacturing or selling for beverage purposes any beer, ale, porter, wine, similar fermented malt or vinous liquor, or fruit juice, containing more than 3.05 percent of alcohol by weight, the burden of proof shall be on such manufacturer to show that the liquid so manufactured or sold contained not more than 3.05 percent of alcohol by weight. In any case where a manufacturer, who has been permitted to develop a liquid such as beer, ale, porter, wine, or fruit juice containing more than the maximum alcoholic content specified in the permit, is charged with failure to reduce the alcoholic content to or below such maximum before such liquid was withdrawn from the factory or otherwise disposed of, then the burden of proof shall be on such manufacturer to show that the alcoholic content of such liquid so manufactured, sold, withdrawn, or otherwise disposed of did not exceed the maximum specified in the permit. In any suit or proceeding involving the alcoholic content of any beverage, the reasonable expense of analysis of such beverage shall be taxed as costs in the case.

(c) Whoever engages in the manufacture for sale of beer, ale, porter, wine, similar fermented malt or vinous liquor, or fruit juice, without such permit if such permit is required, or violates any permit issued to him, shall be subject to the penalties and proceedings provided by law in the case of similar violations of the National Prohibition Act, as amended and supplemented.

(d) This section shall have the same geographical application as the National Prohibition Act, as amended and supplemented.

The amendment was agreed to.

The next amendment was, on page 9, line 14, after the word "porter," to strike out "or other similar fermented liquor" and insert "wine, similar fermented malt or vinous liquor, or fruit juice," so as to make the section read:

SEC. 5. Except to the extent provided in section 4 (b) (2), nothing in section 1 or 4 of this act shall be construed as in any manner authorizing or making lawful the manufacture of any beer, ale, porter, wine, similar fermented malt or vinous liquor, or fruit juice, which at the time of sale or removal for consumption or sale contains more than 3.05 percent of alcohol by weight.

The amendment was agreed to.

The next amendment was, on page 9, line 19, after the word "porter," to strike out "or other similar fermented liquor" and insert "wine, similar fermented malt or vinous liquor, and fruit juice"; on page 10, line 5, after the word "which", to strike out "fermented liquor" and insert "fermented malt or vinous liquor or fruit juice"; and in line 13, after the word "liquor," to insert "or fruit juice," so as to make the section read:

SEC. 6. In order that beer, ale, porter, wine, similar fermented malt or vinous liquor, and fruit juice, containing 3.05 percent or less of alcohol by weight, may be divested of their interstate character in certain cases, the shipment or transportation thereof in any manner or by any means whatsoever, from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country, into any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, which fermented malt or vinous liquor or fruit juice, is intended, by any person interested therein, to be received, possessed, sold, or in any manner used, either in the original package or otherwise, in violation of any law of such State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, is hereby prohibited. Nothing in this section shall be construed as making lawful the shipment or transportation of any liquor or fruit juice the shipment or transportation of which is prohibited by the act of March 1, 1913, entitled "An act divesting intoxicating liquors of their interstate character in certain cases" (U.S.C., supp. VI, title 27, sec. 122).

The amendment was agreed to.

Mr. FESS. Mr. President, I want to take time to make a statement while we are considering the amendments. I assume there will be no serious opposition to any of the amendments so I might as well make my statement now as to wait until after all the amendments are adopted.

Mr. President, I have listened for 40 years to arguments on the question of prohibition. During all of that time I have had more or less a lively interest in whether it is possible for us to eliminate the evils of the liquor traffic. While I have never been what would be called a propagandist on the subject, never having joined any kind of parade or organization—notwithstanding the usual report that the Senator from Ohio is identified with this or that sort of organization, not a word of it containing any element of truth—I have always looked upon the evils of the saloon as something that no man can condone, but as being something which ought to be reduced to the minimum.

It was my misfortune to spend most of my minority years near a little town where there was no police regulation whatever. The institution in that town that gave us more concern and was productive of more evils than all other things that we knew of in the community was the saloon. I think if there could have been something like police regulation so that the unlimited run of evil that flowed out of such an institution could have been controlled, I might not have had such intense opposition to it. But I have never in my life seen any good come out of the saloon as an institution. If there is a single element of virtue in it, I have not been able to find where it is. I have assumed that it was pretty generally conceded that the saloon as an American institution should not be tolerated. During all of my life I have been an enemy of the institution. I have voted on every occasion where the matter came up with a view to limiting its operation.

The first lawsuit I ever conducted was an attempt to close five saloons in the university town where I happened to be living. I have never known a more unlawful and despised group than the men who insisted that they would go on in spite of the regulations of the little town that undertook to exclude them under the laws under which we were then living.

When the matter came up in the State constitutional convention of which I was the vice chairman, I did what I could to write into the Ohio constitution the sanction to prohibit the existence of the saloon in that State. We had a battle there that ran from the days of my youth up to the time that we ultimately put the saloon out of existence. I collaborated with men who are now in this Chamber, who were then Members of the House of Representatives, in order to reduce this evil. One of the men who spoke today favoring the pending measure was the individual who wrote the final clause in the amendment as it passed the House of Representatives in 1920.

We proceeded on the basis that we would put the saloon out of existence first in the voting districts. Then we extended it to the townships. Then under proper education we extended it to the counties, and coexistant with that went the power to the municipalities. During a long period we gave authority to the municipalities to segregate the institution so as to prevent it doing business in certain quarters in the city. We tried every conceivable form of regulation with reference to fixing hours of closing, with reference to blinds upon the windows, with reference to sale to minors—every form of regulation that was conceivable to reduce the evil we tried as an experiment.

I came to the conclusion that there was no way effectually to deal with liquor except by forbidding both its manufacture and sale. After prohibition was adopted by many States, we thought that we had reached the point where we now could extend it to the entire Nation. Since 1920 we have been confronted with the national problem of prohibition enforcement. I agree that prohibition has not been effectually enforced. I know that officials, both in State and Nation, are criticized on the ground that they did not attempt to enforce it. I think that, while there is some basis for that criticism, it is greatly overdrawn. I admit that there have grown up evils largely because of our efforts to prohibit the liquor traffic, nationally speaking, and yet, Mr. President, I do not like the character of the propaganda that is spread over the country in the interest of the return of the saloon.

It is true that practically everybody says he does not desire the return of the saloon, but the place where liquor is sold is a saloon just the same, although it may not be called by that name. The name does not change the character of the place where liquor is sold. There is not a single thing in the pending proposal that will carry into effect the pledge of either one of the two political parties or any feature of those pledges.

Mr. WALSH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Ohio yield to the Senator from Massachusetts?

Mr. FESS. I yield.

Mr. WALSH. I should like to have the Senator's authority for that statement. The Democratic Party did not pledge that it would, through the power of the National Government, forbid the return of the saloon. It did say in its platform that it would urge the several States in the enactment by them of laws to permit the sale of intoxicating liquors to prevent the return of the saloon.

Mr. FESS. The Senator from Massachusetts is correct in that statement; but those who speak about the pledge of the Democratic Party as well as of the Republican Party do in general terms of preventing the return of the saloon.

Mr. WALSH. I think that is true; but the Democratic Party took particular pains to indicate that the control, regulation, distribution, and sale of intoxicating liquors was a State function and not a national one; and when it referred to the saloon it referred to it in an advisory way to the States.

Mr. FESS. The Democratic platform is in this language:

> To effect such repeal we demand that the Congress immediately propose a constitutional amendment to truly representative conventions in the States called to act solely on that proposal; we urge the enactment of such measures by the several States——

Mr. WALSH. That is the point. It urged "the enactment of such measures by the several States."

Mr. FESS. The conclusion of the sentence is—

> As will actually promote temperance.

Mr. WALSH. That is the point—"by the several States."

Mr. FESS. The Senator from Ohio in speaking on the subject has that in mind. I do not think, however, that that in any way weakens the position I have taken—that everybody seems to be indicting the saloon and does not want its return.

However, Mr. President, there is no doubt that we are now in an era of a species of hysteria and the opportunity has been embraced to promote and stimulate a sentiment against what heretofore we have believed could be honestly regarded as promoting a very marked degree of sobriety.

Admitting that we have not effectually enforced the eighteenth amendment—and all of us must admit that—certainly no one can hold that the situation today is worse than before the saloon was abolished or before the prohibitory amendment was written into the Constitution. Mr. President, at certain times in certain sections of the country, going from one town to another on the last trolley car that would run just before midnight it would not have been safe in the days before prohibition for a lady to be on such a car without an escort, because of the drunken men who filled the car. What I say, from incidents falling under my own observation, may generally be applied to conditions which prevailed in various towns and cities throughout the country. Yet today I can walk down the streets of Washington City and very rarely see anyone who is under the influence of intoxicating liquor.

I took the former Vice President, Mr. Curtis, across my State on a trip, during which I should say he met at different places, in the aggregate, 150,000 people. During the 3 days of that journey, meeting 3,000 people here and 5,000 there, not a single man or woman was observed who was under the influence of intoxicating liquor, when before this amendment took effect not only would drunken people be in every audience which a speaker addressed but their conduct would be such as to greatly interfere with the meeting. Vice President Curtis made the observation to me at the end of the third day that the outstanding feature of

the trip was that not a single drunken man or drunken woman had been seen during the entire 3 days.

I do not mean, Mr. President, there is no drunkenness; there is; and I very greatly regret to admit that drunkenness is on the increase because of the conduct of what we otherwise would call our most decent people.

Frequent reference is made to speak-easies. Well, I should like to know who makes it possible for the speak-easies to exist? It is those who have means; it is those who are otherwise respectable; it is those who are willing to have bootleggers supply them on occasions when they need the stuff. It is this class of our population that is making the speak-easy popular; and it does not lie in the mouths of such people to demand the return of the saloon in the interest of sobriety in order to do away with the speak-easy.

The Senator who is now presiding over the body [Mr. GEORGE in the chair] knows as well as I do that before the saloon was put out of existence we had speak-easies and they were one of our greatest problems. We still have them, and will continue to have them, and it will not relieve the situation so far as speak-easies are concerned by making it legal to sell a nonintoxicant and open the way for the speak-easy to operate in the same places and sell intoxicants. We are not going to cure the evil by making it more easy to disseminate the stuff that steals the brain and poise of our citizenship.

I know that there has been an hysteria, a turning of sentiment. One of the most remarkable things I have ever witnessed is the change in sentiment in the Seventy-second Congress. During the first session of that Congress the House and Senate overwhelmingly voted down specific proposals with regard to the repeal of the eighteenth amendment and the modification of the Volstead Act, but the same Congress, in its second session, without a change of personnel, overwhelmingly voted for the same thing which in the first session it had voted down, and as a reason for that action it was stated that public opinion on this question had changed.

Mr. President, whenever the time comes that on a moral question I will first see how the current runs before I vote, and then vote in accordance with that current, though I feel it my duty to prevent the current running in that direction as far as possible, then I will change my views also; but I want it understood here and now that on a question of right and wrong I propose to do what, in my judgment, my people ought to want me to do; and I am not going to undertake to be like a bird of passage, perhaps flying in one direction at this hour and in another direction the next hour. I cannot follow the logic which suggests that I must try to find out what the dominant thought in my particular community is and then register it. If I should do that, when I went out one way I should meet myself coming back in order to keep responsive to the changes of opinion in certain localities.

What our people want today they may not want tomorrow. That is very often the case. It is my duty to study these problems and to vote my conscience, and if my people do not like it, their remedy is to send somebody else in my place. That has been my position for 20 years, and that will continue to be my position so long as I am in public life.

I am opposed, under the guise of raising revenue, to voting for the manufacture and sale of an article the manufacture and sale of which are forbidden by the Constitution. That is a clear case here. The only point is that Senators say it is a question of fact that is in dispute, the question is whether a certain beverage is intoxicating or not. The highest authority that we have in the land has fixed a certain percentage of alcoholic content; and now, simply because there seems to be a sentiment running the other way, it is suggested that we should jump from one half of 1 percent, forget the 2¾ percent which was agitated here for 5 years, and leap to 3.2 percent, and later by an agreement to 3.05 percent. The difference between 3.2 percent and 3.05 percent is so negligible that one ought not to be seriously concerned as to which way he will vote simply because of that change being made.

If 3.2 percent beer is a violation, 3.05 percent beer is a violation, especially in the light of the establishment of the standard of one half of 1 percent that has been rated by the highest tribunal of the country as the content below which there is no intoxication.

Now I want to say this, fellow Senators:

Many people seem to think that merely because there seems to be a trend, a change in the country on this subject, a Senator or a Congressman must change also. That is not my conception of my duty. I am an enemy of the saloon. I shall fight it, as long as God gives me breath to fight it, as the most un-American institution that ever cursed this land. If it could be placed where proper policing could relieve the dangers, it would be different. I do not think that can be done, however; and, even if it could be done, it would be only the cities that could maintain such policing. What about the thousands upon thousands of small centers where the people live without police protection?

That, Mr. President, is the reason why I shall vote against this proposal.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment.

The amendment was agreed to.

Mr. SMITH. Mr. President, out of order, as it is a very important matter, I send to the desk first a resolution which I will ask to have properly referred, and then, out of order——

Mr. LONG. Mr. President, I object to anything being done at this stage except acting on the pending bill. Let us get through with it.

The PRESIDING OFFICER. Objection is made. The clerk will continue the reading of the bill.

The reading of the bill was resumed.

The next amendment of the Committee on Finance was, on page 10, line 19, after the word "porter," to strike out "or other similar fermented liquor" and insert "wine, similar fermented malt or vinous liquor, or fruit juice"; on page 11, line 1, after the word "such", to strike out "fermented liquors" and insert "fermented malt or vinous liquor or fruit juice," and in line 8, after the word "liquor," to insert "or fruit juice," so as to make the section read:

SEC. 7. Whoever orders, purchases, or causes beer, ale, porter, wine, similar fermented malt or vinous liquor, or fruit juice, containing 3.05 percent or less of alcohol by weight, to be transported in interstate commerce, except for scientific, sacramental, medicinal, or mechanical purposes, into any State, Territory, or the District of Columbia, the laws of which State, Territory, or District prohibit the manufacture or sale therein of such fermented malt or vinous liquor or fruit juice for beverage purposes, shall be fined not more than $1,000 or imprisoned not more than 6 months, or both; and for any subsequent offense shall be imprisoned for not more than 1 year. If any person is convicted under this section any permit issued to him shall be revoked. Nothing in this section shall be construed as making lawful the shipment or transportation of any liquor or fruit juice the shipment or transportation of which is prohibited by section 5 of the act entitled "An act making appropriations for the service of the Post Office Department for the fiscal year ending June 30, 1918, and for other purposes", approved March 3, 1917, as amended and supplemented (U.S.C., supp. VI, title 27, sec. 123).

The amendment was agreed to.

The PRESIDING OFFICER. That completes the committee amendments.

Mr. KEAN. Mr. President, lawyers, bankers, doctors, labor organizations, have all held conventions in which they have demanded that we pass a bill similar to this. The people of the United States at the recent election demanded that some such bill as this be passed.

I believe that beer having the alcoholic content permitted under this bill is a nonintoxicant. I believe that because it is almost the same as Munich beer. Some of you may have been to Munich, and may have seen the Germans drink at least a liter of it a night while they were sitting listening to the band. The men drink it, their wives drink it, and their children drink it, and none of them are intoxicated. I have known a man in the city of Newark who drank 29 glasses

a day of this beer, and he never was intoxicated, and he lived to be nearly 90 years old. [Laughter.]

I think I can say, not from my own experience but from what I have observed, that this liquor is not an intoxicant, and therefore it is my intention to vote for this bill.

Mr. DILL. Mr. President, I have an amendment on the desk, which I ask to have stated.

The PRESIDING OFFICER. The amendment will be stated.

The CHIEF CLERK. On page 5, after line 11, it is proposed to insert a new subsection, as follows:

(d) It shall be unlawful to advertise by any means or method any of the liquors or fruit juices described in subsection (a) of this section, or the manufacture, sale, keeping for sale, or furnishing the same, or where, how, from whom, or at what price the same may be obtained, in any State, Territory, or District of the United States, if by the law in force at the time in such State, Territory, or District, it is unlawful to manufacture or sell such liquors or fruit juices: *Provided*, That nothing in this subsection shall apply to newspapers, magazines, or periodicals published outside such State, Territory, or District when mailed or otherwise transported into such State, Territory, or District. Any violation of the provisions of this subsection shall be punished in the manner provided by law for violations of section 17 of the National Prohibition Act.

Mr. DILL. Mr. President, when the bill before the last Congress was reported from the Judiciary Committee it carried an amendment prohibiting advertising in dry States, either by newspapers or by any other method.

Considerable objection was raised because it was said that a newspaper published in a city of a State that permitted the sale of these beverages, located on the border of an adjoining State that prohibited them, would not be able to circulate in the adjoining State. I recognize that there is much basis for that objection; and for that reason I have put in the proviso that nothing in this amendment shall prohibit the circulation of a newspaper, magazine, or periodical into a State by means of the mails or other transportation. It still prohibits the publication and prohibits the use of other methods of advertising.

I desire to speak particularly of one of the other methods of advertising that it seems to me it is impossible to control in any other way, and that is the use of advertising by radio.

It is not sufficient to forbid the radio stations within a State from advertising these beverages, because radio reaches so far that it crosses State lines, and there is no way by which it can be shut out. It seems to me that the radio ought to be kept free from the propaganda that it can be used for if some such provision as this is not in this bill.

Radio programs reach into the homes as no other kind of information or entertainment can. Radio programs are listened to by the children with an interest that they do not have for any other kind of entertainment. It seems to me that we ought to keep this method of disseminating information from being used to propagandize either the sale of these beverages or the minds of the people of those States where these beverages are forbidden.

I do not care to argue or discuss the question at length, but I do want the Senate to consider the effect of this legislation if some such amendment is not provided.

I shall not enter upon a discussion of radio and the objectionable features of the programs we now have; but I just want to suggest for a moment to your imaginations the kind of program to which this legislation will lead unless we make some forbidding provision such as this. We will have presented, no doubt, the most appealing kind of entertainment, the most informative kind of program, and have it sponsored and presented in the name of the breweries and the beer distributors of the country. Before, after, and during the rendition of a beautiful opera radio listeners will be told of the wonders of this beer, how and where to buy it. Such advertising will accompany every kind of entertainment for children, those of middle life, or for the aged. None will be overlooked. None will be able to avoid it.

It seems to me that if there is anything that will tend to break down what cultural influence the radio has, small as it may be, this is the worst practice that could be indulged in; and I believe that, regardless of what may be the views of Senators as to the use of this beverage or its desirability, if they will stop and consider that the people in the States that want to forbid it are entitled to be protected from having propaganda for it coming into their homes by means of the radio, they will support this amendment.

Mr. HARRISON. Mr. President, I hope the amendment will be rejected. We are ready to vote.

Mr. SMITH. Mr. President, before this vote is taken, I desire to make a statement.

I voted for the submission to the States of the eighteenth amendment. I have taken an oath to support the Constitution. I am not sufficiently expert to know what is the line of demarcation between an intoxicating beverage and one that is nonintoxicating. I do not feel that I would be justified under my oath in voting for an alcoholic content that may violate that oath. Therefore I am going to give the benefit of my doubt and lack of knowledge to the sober people of this country.

Under the present circumstances, regardless of what else may be said, I cannot take the responsibility of voting for an alcoholic content that may cause me, in my present state of mind, to violate my solemn oath taken at the Vice President's desk. Therefore I shall vote against this bill.

Mr. HASTINGS. Mr. President, I shall take but a moment. The provisions of the economy bill just passed were, in my judgment, so near the border line of violating the spirit, if not the letter, of the Constitution that I flinched and squirmed as I voted for it.

I think that the bill now before the Senate is clearly against the provisions of the Constitution. If it be not technically true that it is against the Constitution, it seems to me that every fair-minded man and woman of the country must admit that it is against the spirit of the eighteenth amendment.

In my judgment, there is another very excellent reason why this bill should not pass. Wherever a State authorizes the sale of this beverage and sets up a license which must be acquired by the person desiring to sell it, we have immediately set up a place where intoxicating liquor can be purchased without the possibility of any Federal agency or any State agency being able to discover it. In other words, the passage of this measure will make it impossible in any way effectively to enforce the Volstead Act or any other act of any State which undertakes to regulate the sale of intoxicating liquor.

The economy act was passed, we were told, for the purpose of enabling the Government to reduce expenses and reduce the cost of government. This measure, we are told, is to be passed for the purpose of enabling us to raise money to meet the necessary expenses of the Governemnt.

Mr. President, if we have in the one instance to stretch the Constitution in order to save money, and in the second instance shamefully violate it, as I think we would in this case, then I say it is a sad condition in which we find ourselves. As this depression continues, and as this demand for economy on the one side continues, and this demand for additional funds on the other to meet the necessary expenses continues, may I express the hope that we shall not be driven to legalizing the old practice of conducting a lottery, which all States have finally abolished, in order that we might raise additional revenue to meet governmental expenses. If we are willing to go this far, I am not certain, in this day, that we may not reach the other position and again begin to license lotteries in this country in order that the States and the Federal Government might live.

Mr. BAILEY. Mr. President, it is my opinion that 3.05 percent beer is intoxicating, and, therefore, I feel that it is my duty under my oath not to vote for the pending bill. I take this position with full respect for those who differ from me. It is my judgment that within 30 days after the bill shall be enacted, if it shall be enacted, it will be demonstrated to the entire people of this country that 3.05 percent beer is intoxicating in fact.

Second, the statutes passed by the Congress of the United States for 40 years, without exception, have declared beer of a content of 3.05 per cent alcohol and less to be intoxicating, and it is inconceivable to me that this Congress should undertake to reverse the judgment of the Congress of the United States from 1890 to the present date. Since this bears to some extent upon the efforts to interpret the Constitution, the eighteenth amendment, and the language therein, where it says "intoxicating liquors", I am going to take the time to refer to the statutes, with a view of showing that the Congress of the United States has consistently interpreted the words "intoxicating liquors" to embrace vinous, malt, and fermented liquors as fully and effectually as it ever embraced distilled or spirituous liquors. There is no distinction.

Mr. President, my argument is that the effort to show that the expression "intoxicating liquors" in the eighteenth amendment should be restricted to distilled or spirituous liquors cannot be maintained in the light of the settled policy of the law and the definitions accepted by the Congress through a period of 40 years.

I refer first to the act of August 8, 1890 (26 Stat. 313), in language as follows:

> That all fermented—
>
> That is, beer—
>
> distilled, or other intoxicating liquors or liquids transported into any State or Territory, or remaining therein for use—

I need not read the entire statute. That is the first statute placing the control of the liquor traffic, so far as interstate commerce is concerned, at the place of delivery.

The next act is the act of March 1, 1913 (37 Stat. 699), which reads in part as follows:

> The shipment or transportation, in any manner or by any means whatsoever, of any spiritous, vinous, malted, fermented, or other intoxicating liquor—

I need not read that statute further. The reference is sufficient.

Again, section 5 of the act of March 3, 1917 (39 Stat. 1069):

> No letter, postal card, circular, newspaper, * * * containing any advertisement of spiritous, vinous, malted, fermented, or other intoxicating liquors * * *.

They are classified as "intoxicating liquors" regardless of the source of the method of manufacture.

Finally, the act of March 4, 1909 (35 Stat. 1136), taking effect January 1, 1910:

> Any officer, agent, or employee of any railroad company, express company, or other common carrier * * * who shall knowingly deliver * * * any spiritous, vinous, malted, fermented, or other intoxicating liquors * * *.

My whole point is that it is the settled policy of the law, the unquestioned interpretation of the words "intoxicating liquors" that they relate to any liquors having the qualities of intoxication, regardless of what they are made of, or how they are made.

The PRESIDENT pro tempore. The question is on agreeing to the amendment offered by the senior Senator from Washington [Mr. DILL].

Mr. DILL. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered, and the Chief Clerk proceeded to call the roll.

Mr. BAILEY (when his name was called). I have a general pair on this bill with the senior Senator from Utah [Mr. KING]. I do not know how that Senator would vote on this particular amendment, and therefore I withhold my vote.

Mr. WALSH (when Mr. COOLIDGE's name was called). My colleague [Mr. COOLIDGE] is necessarily absent on account of a death in his family. If he were present, he would vote "nay" on this amendment.

Mr. GEORGE (when his name was called). I have a general pair on this bill with the junior Senator from South Carolina [Mr. BYRNES]. I do not know how he would vote upon this amendment, and I therefore withhold my vote.

Mr. JOHNSON (when Mr. MCADOO's name was called). The junior Senator from California [Mr. MCADOO] is sick and confined to his room at present, and therefore is unable to be present. If he were present, he would vote, I am informed, "nay."

The roll call was concluded.

Mr. DICKINSON. On this vote I have a general pair with the senior Senator from Kentucky [Mr. BARKLEY]. Not knowing how he would vote, I withhold my vote.

Mr. BULKLEY. I have a general pair with the junior Senator from Wyoming [Mr. CAREY], who is necessarily absent. I do not know how he would vote on this question. I transfer my pair to the senior Senator from Illinois [Mr. LEWIS] and vote "nay."

Mr. HEBERT. I desire to announce the following general pairs:

The Senator from Pennsylvania [Mr. DAVIS] with the Senator from Kentucky [Mr. LOGAN];

The Senator from South Dakota [Mr. NORBECK] with the Senator from Wyoming [Mr. KENDRICK]; and

The Senator from Minnesota [Mr. SHIPSTEAD] with the Senator from Virginia [Mr. GLASS].

I also desire to announce that the junior Senator from Minnesota [Mr. SCHALL] is necessarily absent.

I am not advised how the Senators I have named would vote on this question if present and voting.

The result was announced—yeas 36, nays 38, as follows:

YEAS—36

Adams	Caraway	Hastings	Robinson, Ind.
Ashurst	Connally	Hatfield	Russell
Austin	Dale	Hayden	Sheppard
Bankhead	Dill	Keyes	Smith
Black	Fess	McGill	Stephens
Bone	Frazier	Neely	Thomas, Okla.
Borah	Goldsborough	Norris	Townsend
Bratton	Gore	Nye	Vandenberg
Capper	Hale	Pope	White

NAYS—38

Bachman	Fletcher	McNary	Thomas, Utah
Barbour	Harrison	Metcalf	Trammell
Brown	Hebert	Murphy	Tydings
Bulkley	Johnson	Overton	Van Nuys
Bulow	Kean	Patterson	Wagner
Clark	La Follette	Pittman	Walcott
Copeland	Lonergan	Reed	Walsh
Couzens	Long	Reynolds	Wheeler
Dieterich	McCarran	Robinson, Ark.	
Duffy	McKellar	Steiwer	

NOT VOTING—20

Bailey	Coolidge	George	Logan
Barkley	Costigan	Glass	McAdoo
Byrd	Cutting	Kendrick	Norbeck
Byrnes	Davis	King	Schall
Carey	Dickinson	Lewis	Shipstead

So Mr. DILL's amendment was rejected.

Mr. BORAH. Mr. President, I desire to offer an amendment to be inserted at the proper place in the bill. It is a provision reported in the former bill except that I have changed the age from 21 years to 16 years.

The PRESIDENT pro tempore. Let the amendment be read for the information of the Senate.

The CHIEF CLERK. Insert at the proper place in the bill the following:

> It shall be unlawful to give or sell any of the above beverages to persons under 16 years of age. Any person violating this provision shall be subject to a fine not exceeding $100 or be imprisoned not to exceed 6 months.

Mr. BORAH. Upon the amendment I ask for the yeas and nays.

The yeas and nays were ordered, and the Chief Clerk called the names of Mr. ADAMS and Mr. ASHURST, who responded.

Mr. LONG. Mr. President, a point of order. Is not this a police regulation we are trying to put in the bill?

Mr. BORAH. Mr. President, I make the point of order that the roll call has been begun.

The PRESIDENT pro tempore. The point of order is sustained. The clerk will continue calling the roll.

The Chief Clerk resumed the calling of the roll.

Mr. BAILEY (when his name was called). On this bill I have a general pair with the senior Senator from Utah [Mr. KING]. Not being informed as to how he would vote on the pending question I withhold my vote. If at liberty to vote I would vote "yea."

Mr. BULKLEY (when his name was called). Repeating the announcement previously made with respect to my pair and its transfer I vote "nay."

Mr. WALSH (when Mr. COOLIDGE's name was called). I make the same announcement as previously made with reference to my colleague [Mr. COOLIDGE]. If present, he would vote "nay."

Mr. DICKINSON (when his name was called). I have a general pair with the senior Senator from Kentucky [Mr. BARKLEY], who is necessarily absent from the Chamber. Not knowing how he would vote on the pending amendment, I withhold my vote. If permitted to vote, I would vote "yea."

Mr. GEORGE (when his name was called). Making the same announcement as on the previous vote, I withhold my vote. If permitted to vote, I would vote "yea."

The roll call was concluded.

Mr. HEBERT. I desire to announce the following general pairs:

The Senator from Pennsylvania [Mr. DAVIS] with the Senator from Kentucky [Mr. LOGAN];

The Senator from Minnesota [Mr. SHIPSTEAD] with the Senator from Virginia [Mr. GLASS]; and

The Senator from South Dakota [Mr. NORBECK] with the Senator from Wyoming [Mr. KENDRICK].

I am not advised how any of these Senators would vote on this question.

Mr. DIETERICH. I desire to announce that my colleague the senior Senator from Illinois [Mr. LEWIS] is detained from the Senate by illness. If present, he would vote "nay."

The result was announced—yeas 50, nays 23, as follows:

YEAS—50

Adams	Dill	McKellar	Steiwer
Ashurst	Fess	McNary	Stephens
Austin	Frazier	Neely	Thomas, Okla.
Bankhead	Goldsborough	Norris	Thomas, Utah
Black	Gore	Nye	Townsend
Borah	Hale	Patterson	Trammell
Bratton	Hastings	Pope	Tydings
Byrd	Hatfield	Reed	Vandenberg
Capper	Hayden	Reynolds	Walcott
Caraway	Hebert	Robinson, Ind.	Wheeler
Connally	Johnson	Russell	White
Copeland	Keyes	Sheppard	
Dale	McGill	Smith	

NAYS—23

Bachman	Couzens	La Follette	Pittman
Barbour	Dieterich	Lonergan	Robinson, Ark.
Brown	Duffy	McCarran	Van Nuys
Bulkley	Fletcher	Metcalf	Wagner
Bulow	Harrison	Murphy	Walsh
Clark	Kean	Overton	

NOT VOTING—21

Bailey	Costigan	Kendrick	Norbeck
Barkley	Cutting	King	Schall
Bone	Davis	Lewis	Shipstead
Byrnes	Dickinson	Logan	
Carey	George	Long	
Coolidge	Glass	McAdoo	

So Mr. BORAH's amendment was agreed to.

Mr. CONNALLY. Mr. President, I shall vote against what is known as the "beer bill." It provides for beer of substantially the same alcoholic content as ordinary beer sold before the adoption of the eighteenth amendment, which I regard as intoxicating. The Constitution prohibits the manufacture and sale of intoxicating liquor. So long as the eighteenth amendment is the law of the land it ought to be respected and enforced, and I shall not vote for any measure either nullifying or evading it.

The repeal of the eighteenth amendment has been submitted to the people in order that they, in the manner provided by the Constitution, may in their sovereign capacity pass upon the question. It is the highest function of the people to take such action as they desire with regard to the organic law of the land. I voted for the resubmission of the eighteenth amendment to the people in response to a referendum in my State and in accordance with the Democratic platform of 1932. However, so long as it is a part of the Constitution I am sworn to uphold and defend it. The Democratic platform of 1932 does not sanction the sale of beverages of an intoxicating alcoholic content. It provides only for such a content "as is permissible under the Constitution." Believing that the alcoholic content provided in the pending bill is intoxicating, I shall vote "nay" upon its passage.

The PRESIDENT pro tempore. The bill is open to further amendments. If there are no further amendments, the question is, Shall the amendments be engrossed and the bill be read a third time?

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDENT pro tempore. The question is, Shall the bill pass?

Mr. HARRISON and others called for the yeas and nays.

The yeas and nays were ordered, and the Chief Clerk proceeded to call the roll.

Mr. BAILEY (when his name was called). On this question I have a pair with the senior Senator from Utah [Mr. KING]. If I were permitted to vote, I would vote "nay." If present, the Senator from Utah [Mr. KING] would vote "yea."

Mr. BULKLEY (when his name was called). I have a general pair with the junior Senator from Wyoming [Mr. CAREY]. If that Senator were present, he would vote for the passage of the bill, and therefore I am at liberty to vote. I vote "yea." I understand the junior Senator from Wyoming has been specially paired on this question.

Mr. DICKINSON (when his name was called). Making the same announcement as on the previous vote, I desire to state that if the Senator from Kentucky [Mr. BARKLEY] were here he would vote "yea." If permitted to vote, I would vote "nay."

Mr. REED (when Mr. DAVIS's name was called). My colleague the junior Senator from Pennsylvania [Mr. DAVIS] is necessarily absent on account of illness. If present, he would vote "yea." He has a general pair with the junior Senator from Kentucky [Mr. LOGAN], but I am not informed as to how the junior Senator from Kentucky would vote on this question.

Mr. GEORGE (when his name was called). Upon the passage of the bill I have a pair with the junior Senator from South Carolina [Mr. BYRNES]. If he were present, he would vote "yea." If I were privileged to vote, I would vote "nay."

Mr. DIETERICH (when Mr. LEWIS's name was called). My colleague the senior Senator from Illinois [Mr. LEWIS] is necessarily absent on account of illness. If present, he would vote "yea."

Mr. JOHNSON (when Mr. MCADOO's name was called). I again announce the illness of my colleague the junior Senator from California [Mr. MCADOO] and his absence for that reason. If present, he would vote "yea."

The roll call was concluded.

Mr. BYRD. My colleague the senior Senator from Virginia [Mr. GLASS] is absent on account of illness. Were he present and not paired, he would vote "nay."

Mr. WALSH. Repeating the announcement with reference to the absence of my colleague [Mr. COOLIDGE], I wish to state that if he were present he would vote "yea."

Mr. GORE. Mr. President, the Democratic State platform——

The PRESIDENT pro tempore (rapping for order). The Senator is not in order.

Mr. GORE. I rise to a point of personal privilege.

The PRESIDENT pro tempore. The Senator is out of order.

Mr. GORE. I desire to ask to be excused from voting.

The PRESIDENT pro tempore. The Senator from Oklahoma asks to be excused from voting.

Mr. ROBINSON of Arkansas. Mr. President, I move that the Senator from Oklahoma be so excused.

The motion was agreed to.

Mr. SMITH (after having voted in the negative). I must withdraw my vote because I have a pair with the Senator from California [Mr. MCADOO].

Mr. HEBERT. I wish to announce the following pairs on this question:

The Senator from Wyoming [Mr. CAREY] with the Senator from Colorado [Mr. COSTIGAN];

The Senator from Minnesota [Mr. SHIPSTEAD] with the Senator from Virginia [Mr. GLASS]; and

The Senator from South Dakota [Mr. NORBECK] with the Senator from Wyoming [Mr. KENDRICK].

I am advised that Senators CAREY, SHIPSTEAD, and KENDRICK, if present, would vote "yea," and that Senators COSTIGAN, GLASS, and NORBECK, if present, would vote "nay."

I also wish to announce the necessary absence of Senators CAREY, SHIPSTEAD, SCHALL, CUTTING, and NORBECK.

The result was announced—yeas 43, nays 30, as follows:

YEAS—43

Ashurst	Couzens	Long	Robinson, Ark.
Bachman	Dieterich	McCarran	Steiwer
Bankhead	Dill	McKellar	Thomas, Utah
Barbour	Duffy	McNary	Trammell
Black	Fletcher	Metcalf	Tydings
Bone	Harrison	Murphy	Van Nuys
Brown	Hebert	Norris	Wagner
Bulkley	Johnson	Overton	Walcott
Bulow	Kean	Pittman	Walsh
Clark	La Follette	Reed	Wheeler
Copeland	Lonergan	Reynolds	

NAYS—30

Adams	Dale	Keyes	Sheppard
Austin	Fess	McGill	Stephens
Borah	Frazier	Neely	Thomas, Okla.
Bratton	Goldsborough	Nye	Townsend
Byrd	Hale	Patterson	Vandenberg
Capper	Hastings	Pope	White
Caraway	Hatfield	Robinson, Ind.	
Connally	Hayden	Russell	

NOT VOTING—21

Bailey	Cutting	Kendrick	Schall
Barkley	Davis	King	Shipstead
Byrnes	Dickinson	Lewis	Smith
Carey	George	Logan	
Coolidge	Glass	McAdoo	
Costigan	Gore	Norbeck	

So the bill was passed.

Mr. GORE. Mr. President, I desire to say that the Oklahoma State Democratic platform upon which I was elected to the Senate pledged the people of Oklahoma in express terms that if I should be elected to the Senate I would resist any effort to repeal the eighteenth amendment or to weaken the Volstead Act. The national Democratic platform adopted last year declared that, pending the repeal of the eighteenth amendment, the Democratic Party favored the modification of the Volstead Act. I found myself in this situation: Bidden by the national Democratic platform to vote for the measure just passed and forbidden by the Democratic platform of the State of Oklahoma to vote for the measure just passed. In that dilemma, and on account of that dilemma, which I regret, I asked the Senate to excuse me from voting, and I thank the Senate for its courtesy.

At this point I ask to have printed in the RECORD the provision of the national Democratic platform and the provision of the Democratic platform of the State of Oklahoma to which I have referred.

The PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

The provisions of the platforms are as follows:

[From the national Democratic platform]

Pending repeal, we favor immediate modification of the Volstead Act to legalize the manufacture and sale of beer and other beverages of such alcoholic content as is permissible under the Constitution and to provide therefrom a proper and needed revenue.

[From the Oklahoma State Democratic platform]

We pledge the people of Oklahoma that if the Democratic candidates for United States Senate and Congress are elected to Congress, they will oppose the repeal of the eighteenth amendment or any effort to weaken the Volstead law, unless and until the people themselves, by their expressed will, shall have otherwise directed.

MEMORIAL ADDRESS BY THE GOVERNOR OF MAINE ON THE LATE PRESIDENT COOLIDGE

Mr. HALE. Mr. President, I ask leave to have printed in the RECORD a eulogy on the late President Coolidge delivered by the governor of my State, Hon. Louis J. Brann.

There being no objection, the address was ordered to be printed in the RECORD.

Governor Brann said:

Only yesterday they took Calvin Coolidge home.

In the mother soil of Vermont, in peace within the austere grandeur of the Vermont hills, he rests, one with eternal silence—while the Nation mourns.

Yesterday it was my solemn privilege to stand in company with sorrowing men and women where the great and the powerful knelt in prayer with the humble commoner, in the hallowed presence of the deceased.

Our people were disturbed at the sudden passing of Calvin Coolidge.

Like the hasty removal of some revered landmark, the falling of a noble tree, the collapse of a sturdy structure that had grown to be a public possession, came the shocking news of the swift end of him who had become an American institution.

But to New England, as perhaps to no other section of the country, is reserved more accurate measure of estimate, more complete understanding, more heart knowledge of him.

For all New England was neighbor to Calvin Coolidge.

And he was no mystery to the consciousness of New England.

His counterparts, in homely virtues and in simplicity of life, are found everywhere in New England, the descendants of a pioneering people.

Writers and historians will soon make their estimate of Calvin Coolidge, but they may miss the foundational thing, the pure gold of his heart.

Let it suffice to say that his was a life of public trust, never betrayed.

What a figure!

Tightly closed lips, compressed emotions, so common in this stern land of New England, which labors to produce men of the immutability of its everlasting hills.

Governor of Massachusetts, and how rings like a trumpet call his challenge, "Have faith in Massachusetts—"

There will ever live with me that scene in the humble farmhouse, near which he sleeps, when Calvin Coolidge learned that fate had raised him to the seat of the world's mightiest ruler, President of the United States of America.

In the soft light of kerosene lamp, which furnishes light for many such homesteads, Calvin Coolidge, facing his age-worn father, subscribing to the oath that qualified him as President.

He seemed to be a man of destiny; perhaps he was. No more swift was the stroke of fate that made him President than the stroke that took him from amongst us.

It is not for me at this time to analyze the forces that bent Calvin Coolidge to exalted service.

"He lived humble,
With understanding,
In sympathy with mankind, and in
Love, not fear, of God."

In his own Vermont hills, shrouded in the earthly texture of New England's very soil, he lies, and overhead the master strings of nature's own symphony breathe his requiem. And as long as the granite and marble shall endure men will remember Calvin Coolidge.

Yes; home at last, in harmony with the Infinite, fallen on sleep, in peace, in the very atmosphere of a Nation's birth—New England—secure in another shrine upon the Vermont hills

AGRICULTURAL RELIEF

Mr. SMITH. Mr. President, out of order I ask unanimous consent to introduce a bill in pursuance of the message of the President in reference to farm relief. I hope the members of the Committee on Agriculture and Forestry who are present will take notice that I shall call a meeting of the committee in the morning at 10 o'clock to take such action as the committee may see fit to take.

The PRESIDING OFFICER (Mr. CLARK in the chair). The Senator from South Carolina asks unanimous consent to introduce a bill and have it referred to the Committee on Agriculture and Forestry.

Mr. RUSSELL. Mr. President, I understand that I may object to the request of the Senator from South Carolina, if I so desire?

The PRESIDING OFFICER. The Senator from Georgia has that right.

Mr. RUSSELL. Reserving the right to object, I wish to state——

Mr. LA FOLLETTE. Mr. President, I rise to a point of order. The point of order is that the Senate is in disorder and that no further business should be transacted, because it is impossible to know what is going on.

The PRESIDING OFFICER. The point of order is well taken. The Senate will be in order.

Mr. RUSSELL. Mr. President, this is one of the most important measures which will come before the Senate. I do not want to vote on this bill tomorrow afternoon with-

out having had an opportunity at least to read what it proposes and to study its provisions.

Mr. ROBINSON of Arkansas. Mr. President, may I say to the Senator from Georgia that it is my intention, after a little more business shall have been transacted, to move a recess until Monday, and there is no expectation of taking up the bill introduced by the Senator from South Carolina prior to some time next week.

Mr. RUSSELL. With that statement on the part of the Senator from Arkansas, I shall not object.

Mr. LONG. Mr. President, I want to reserve the right to object.

Mr. McGILL. What is the request for unanimous consent? I ask that it be stated.

The PRESIDING OFFICER. The Senator from South Carolina has asked unanimous consent that he be permitted to introduce a bill at this time out of order.

Mr. SMITH. May I be allowed to make a statement? This bill is sought to be introduced in pursuance of the message of the President. There will be afforded ample time for those who are interested in the bill to read it and study it. The committee will meet tomorrow, but when the bill will be ready to be reported to the Senate will depend upon the investigation and consideration of the committee.

The PRESIDING OFFICER. Is there objection?

Mr. LONG. Just a moment, Mr. President. I do not want to object to anything, but this is an agricultural bill. I undertook to read a little of it this afternoon, and it is very apparent to my mind that the chairman of the committee, while he has not said so to me, from what I know of him will himself want to make some amendments to the bill, if I understand the logic of what he has been advocating here. What I hope to do is to avoid an early committee decision on the bill; in other words, some of my folks and myself want an opportunity for a brief hearing on this agricultural bill before the committee.

Mr. SMITH. I think there will be ample opportunity for those interested to present their views.

Mr. ROBINSON of Arkansas. Mr. President, if objection is made to the introduction of the bill, as any Senator may object, instead of moving a recess I shall move an adjournment until tomorrow so that the Senator may have the opportunity of introducing his bill. All he has requested is the right to introduce the bill and have it referred to the committee, and if consent is not granted, I shall, of course, refrain from moving a recess and shall ask the Senate to adjourn, in order that the Senator may have that opportunity tomorrow.

Mr. LONG. I do not want to object to the introduction of the bill, but I do not want this bill, embracing a number of pages—and I myself have worked over some agricultural bills during my lifetime, and I know how involved and complicated they are—I do not want the committee to close its doors on this matter before even Monday. Today is Thursday, and I want a chance to assemble some figures and facts and present them to the committee, and if I may understand from the Senator from South Carolina that this is not going to be one of those hurdy-gurdy matters, I will have no objection.

Mr. SMITH. Mr. President, I may say that it is necessary for the bill to be printed and placed on the desks of Senators, so that they may have an opportunity to become thoroughly acquainted with its provisions.

Mr. TRAMMELL. Mr. President, may I ask the Senator a question?

The PRESIDING OFFICER. Does the Senator from South Carolina yield to the Senator from Florida?

Mr. SMITH. I yield.

Mr. TRAMMELL. As I understood when the Senator requested unanimous consent to introduce the bill, he coupled with it a notice to his committee that it would meet tomorrow morning?

Mr. SMITH. Yes; that is what I want to do.

Mr. TRAMMELL. That looks as though the committee is going to proceed to try to expedite or rush the bill as they may see fit.

Mr. SMITH. No, Mr. President. My only object is this: if farm relief is to be had for the year 1933 it is essential for us to proceed at once to the consideration of a measure which will meet the approval of the Senate and of the House, which I think can be done, but it is not proposed to do it forcibly but to do it advisedly. Nobody is trying to rush anything through. The only imperative element is to get a bill passed as early as possible, so as to afford relief for agricultural conditions in the year 1933.

The PRESIDING OFFICER. Is there objection to the request of the Senator from South Carolina? The Chair hears none.

The bill (S. 507) to relieve the existing national economic emergency by increasing agricultural purchasing power, was read twice by its title and referred to the Committee on Agriculture and Forestry.

SENATE OFFICE BUILDING

Mr. COPELAND. Mr. President, as chairman of the Committee on Rules, I wish to advise Senators that late Saturday night the electricians will go into the office building to install the service wires in the new addition, and there will be no elevator service and no lights on Sunday. I want Senators to bear that in mind and not blame the committee if they should be inconvenienced.

SUBSCRIPTION TO NOTES OR DEBENTURES OF STATE BANKS

Mr. ROBINSON of Arkansas. Mr. President, I ask now the attention of Senators, and particularly the attention of the Senator from Oregon [Mr. McNARY]. Yesterday a request was made for the consideration of Senate bill 334, to amend the Emergency Banking Act, a bill which was introduced by the Senator from Ohio [Mr. BULKLEY] and reported unanimously by the committee. I now ask unanimous consent for the present consideration of the bill and ask that the clerk report it at the desk.

The PRESIDING OFFICER. Is there objection?

Mr. McNARY. Mr. President, last evening I objected to the consideration of the bill. I have no objection at this time, especially in view of the fact that the Senator from West Virginia [Mr. HATFIELD], who is interested in the measure, is present, and also because it has been unanimously reported by the committee.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill (S. 334) to amend the act entitled "An act to provide relief in the existing national emergency in banking, and for other purposes," approved March 9, 1933, which had been reported from the Committee on Banking and Currency, with amendments, on page 1, line 6, after the word "the," where it occurs the first time, to strike out "second" and insert "first"; on page 2, line 7, after the word "the," to insert "legally issued"; at the beginning of line 9, to insert "having voting rights similar to those herein provided with respect to preferred stock"; and to insert a new section, as follows:

SEC. 2. The second sentence of said section 304 is amended to read as follows: "The Reconstruction Finance Corporation may, with the approval of the Secretary of the Treasury, and under such rules and regulations as he may prescribe, sell in the open market the whole or any part of the preferred stock, capital notes, or debentures of any national banking association, State bank or trust company acquired by the corporation pursuant to this section."

So as to make the bill read:

Be it enacted, etc., That section 304 of the act entitled "An act to provide relief in the existing national emergency in banking, and for other purposes," approved March 9, 1933, is amended by adding after the first sentence thereof the following new sentences: "Nothing in this section shall be construed to authorize the Reconstruction Finance Corporation to subscribe for preferred stock in any State bank or trust company if under the laws of the State in which such State bank or trust company is located the holders of such preferred stock are not exempt from double liability. In any case in which under the laws of the State in which it is located a State bank or trust company is not permitted to issue preferred stock exempt from double liability, the Reconstruction Finance Corporation is authorized, for the purpose of this section, to purchase the legally issued capital notes or debentures of such State bank or trust company, having voting rights similar to those herein provided with respect to preferred stock."

SEC. 2. The second sentence of said section 304 is amended to read as follows: "The Reconstruction Finance Corporation may, with the approval of the Secretary of the Treasury, and under such rules and regulations as he may prescribe, sell in the open market the whole or any part of the preferred stock, capital notes, or debentures of any national banking association, State bank or trust company acquired by the corporation pursuant to this section."

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. BULKLEY. Mr. President, I ask unanimous consent that at the appropriate point in connection with the consideration of Senate bill 334 there may be printed in the RECORD a list of the States in which there is a constitutional provision for double liability on State bank stocks. I desire to acknowledge my indebtedness to the Senator from West Virginia for supplying the list.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

States in which there is a constitutional provision for double liability on bank stock

[The article and section of the State constitution in which this provision is found is also shown opposite the name of each State.]

State	Article	Section
Arizona	XIV	11
Illinois	XI	6
Indiana	XI	6
Iowa	VIII	9
Maryland	III	39
Minnesota	X	[1]3
Nebraska	XII	7
New York	VIII	7
Ohio	XIII	3
Oregon	XI	3
South Carolina	IX	18
South Dakota	XVIII	3
Texas	XVI	16
Utah	XII	18
Washington	XII	11
West Virginia	XI	6

[1] Laws of 1929, ch. 429.

EXECUTIVE SESSION

Mr. ROBINSON of Arkansas. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business in open session.

FOREIGN SERVICE

Mr. PITTMAN. From the Committee on Foreign Relations I report back favorably certain nominations. These nominations are unanimously reported by the committee. No objection has been made to any of the nominees. I ask for the present consideration of the nominations, in view of the fact that we probably will not have another executive session for some time.

Mr. COUZENS. May we have the names first?

Mr. PITTMAN. I ask that the nominations be read.

The Chief Clerk read the nomination of Jesse Isidor Straus, of New York, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to France.

The PRESIDING OFFICER (Mr. CLARK in the chair). Without objection, the nomination is confirmed.

The Chief Clerk read the nomination of Josephus Daniels, of North Carolina, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Mexico.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

The Chief Clerk read the nomination of Norman Armour, of New Jersey, lately a Foreign Service officer of class 1 and a counselor of embassy, to be Envoy Extraordinary and Minister Plenipotentiary of the United States of America to Haiti.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

The Chief Clerk read the nomination of Paul Knabenshue, of Ohio, a Foreign Service officer of class 3 and a consul general, to act as minister resident and consul general of the United States of America to Iraq.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

The Chief Clerk read the nomination of Avra M. Warren, of Maryland, to be consul general.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

The Chief Clerk read the nomination of Harold Shantz, of New York, to be secretary in the Diplomatic Service.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

The Chief Clerk read the nomination of H. Merrell Benninghoff, of New York, to be secretary in the Diplomatic Service.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

The Chief Clerk read the nomination of Cloyce K. Huston, of Iowa, to be secretary in the Diplomatic Service.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

The Chief Clerk read the nomination of Winthrop R. Scott, of Ohio, to be secretary in the Diplomatic Service.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

The Chief Clerk read the nomination of H. Merle Cochran, of Arizona, to be secretary in the Diplomatic Service.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

Mr. PITTMAN. I ask that the President be notified of these confirmations.

The PRESIDING OFFICER. Without objection, it is so ordered.

Are there any further reports of committees? If not, the calendar is in order.

PHILIPPINE ISLANDS

The Chief Clerk read the nomination of John J. Holliday, of Missouri, to be Vice Governor of the Philippine Islands, vice George C. Butte, resigned.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

FEDERAL RADIO COMMISSION

The Chief Clerk read the nomination of Eugene O. Sykes, of Mississippi, to be a member of the Federal Radio Commission for the term of 6 years from February 24, 1933.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

That completes the calendar.

The Senate resumed legislative session.

RECESS

Mr. ROBINSON of Arkansas. I move that the Senate take a recess until 12 o'clock noon on Monday next.

The motion was agreed to; and (at 6 o'clock and 35 minutes p.m.) the Senate took a recess until Monday, March 20, 1933, at 12 o'clock meridian.

CONFIRMATIONS

Executive nominations confirmed by the Senate March 16 (legislative day of Mar. 13), 1933

AMBASSADORS EXTRAORDINARY AND PLENIPOTENTIARY

Josephus Daniels to be Ambassador Extraordinary and Plenipotentiary to Mexico.

Jesse Isidor Straus to be Ambassador Extraordinary and Plenipotentiary to France.

ENVOY EXTRAORDINARY AND MINISTER PLENIPOTENTIARY

Norman Armour to be Envoy Extraordinary and Minister Plenipotentiary to Haiti.

RESIDENT MINISTER AND CONSUL GENERAL

Paul Knabenshue to act as minister resident and consul general to Iraq.

FOREIGN SERVICE OFFICERS

The following-named Foreign Service officers to be diplomatic and consular officers of the grade indicated, as follows:

CONSUL GENERAL

Avra M. Warren, of Maryland.

SECRETARIES IN THE DIPLOMATIC SERVICE

Harold Shantz, of New York.
H. Merrell Benninghoff, of New York.
Cloyce K. Huston, of Iowa.
Winthrop R. Scott, of Ohio.
H. Merle Cochran, of Arizona.

ASSISTANT SECRETARY OF THE NAVY

Henry Latrobe Roosevelt to be Assistant Secretary of the Navy.

VICE GOVERNOR OF THE PHILIPPINE ISLANDS

John H. Holliday to be Vice Governor of the Philippine Islands.

MEMBER OF THE FEDERAL RADIO COMMISSION

Eugene O. Sykes to be a member of the Federal Radio Commission.

PROMOTIONS IN THE NAVY

Medical Director Perceval S. Rossiter to be Surgeon General and Chief of the Bureau of Medicine and Surgery.

Naval Constructor Emory S. Land to be Chief Constructor and Chief of the Bureau of Construction and Repair.

HOUSE OF REPRESENTATIVES

THURSDAY, MARCH 16, 1933

The House met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D.D., offered the following prayer:

Great is the Lord, and greatly to be praised in the city of our God and in His holy mountain. How wonderful is Thy providence, Heavenly Father. Each day it dawns upon us with the beauty and the promise of the morning. We rejoice that "He that keepeth Israel shall neither slumber nor sleep." Heavenly Father, bless all our homes with the heavenly gifts of love and remember our loved ones who are far away with a joy and peace that shine brighter than the day. Create within us a greater determination to build up our spiritual lives with the sentiments of love, fidelity, brotherhood, and aspiration, and glory be unto Thy holy name forever. Amen.

The Journal of the proceedings of yesterday was read and approved.

PRIVATE BILLS

Mr. BYRNS. Mr. Speaker, there were a number of bills passed at the last session which were signed by the Vice President and the Speaker, but were not signed in time to reach the President. These bills, therefore, did not become law. The Senate has again passed these bills. They are now upon the Speaker's desk, and it has been suggested by those interested that it would be proper to call them up now and ask unanimous consent for their consideration and passage.

Mr. SNELL. Will the gentleman yield for a question?

Mr. BYRNS. Yes.

Mr. SNELL. If I am correctly informed, each one of these bills passed the House by unanimous consent, and they are all private bills.

Mr. BYRNS. Yes.

Mr. SNELL. There are no general bills among them?

Mr. BYRNS. No general bills at all; and the bills will be called up one at a time.

Mr. SNELL. I can see no objection to that.

Mr. SABATH. Will the gentleman from Tennessee yield before his unanimous-consent request is granted?

Mr. BYRNS. Yes.

Mr. SABATH. Has the gentleman a list of these bills?

Mr. BYRNS. Yes; I have a list of them.

Mr. SABATH. Would it not be fair to the House to read the list?

Mr. BYRNS. I am going to call them up one at a time and ask unanimous consent in each instance.

Mr. BLANTON. Mr. Speaker, I reserve the right to object to ask the gentleman a question. There are only nine of these bills, I believe.

Mr. BYRNS. That is correct.

Mr. BLANTON. And as they are called up, they will be subject to objection and one objection will stop the bill when it is called, in case there should be one here that we have overlooked?

Mr. BYRNS. Yes.

Mr. BLANTON. With that understanding, I shall not object.

A. Y. MARTIN

Mr. BYRNS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (S. 155) for the relief of A. Y. Martin, and consider the same.

The Clerk read the bill, as follows:

Be it enacted, etc., That the Comptroller General of the United States is authorized and directed to settle and certify for payment to A. Y. Martin, out of any money in the Treasury not otherwise appropriated, the sum of $980, as in full for services rendered as a de facto United States commissioner at Paducah, Ky., from December 8, 1930, to August 5, 1931.

The SPEAKER. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

The bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider laid on the table.

FRANCIS R. SANCHEZ

Mr. BYRNS. Mr. Speaker, I make the same request with respect to the bill (S. 154) confirming the claim of Francis R. Sanchez, and for other purposes.

The Clerk read the bill, as follows:

Be it enacted, etc., That the claim of Francis R. Sanchez for lands described as sections 33 and 34, township 6 south, range 18 east, and as section 5, township 7 south, range 18 east, Tallahassee meridian, Florida, embracing 4,000 acres as shown on plats of survey approved May 27, 1841, contained in Report No. 2 as claim no. 25, of the commissioners of the district of east Florida (American State Papers, Duff Green edition, vol. 3, p. 643), communicated to Congress by the Treasury Department, May 20, 1824, be, and the same is hereby, approved and confirmed to the equitable owners of the equitable title thereto and to their respective heirs and assigns forever: *Provided*, That this act shall amount only to a relinquishment of any title that the United States has, or is supposed to have, in and to any of said lands, and shall not be construed to abridge, impair, injure, prejudice, divert, or affect in any manner whatsoever any valid right, title, or interest of any person or body corporate whatever heretofore acquired based on a patent issued by the United States.

The SPEAKER. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

The bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider laid on the table.

CONVEYANCE OF CERTAIN LAND IN LOS ANGELES, CALIF.

Mr. BYRNS. Mr. Speaker, I make the same request with reference to S. 153, to convey certain land in the county of Los Angeles, State of California.

The Clerk read the bill as follows:

Whereas on or about the 22d day of August 1921 the county of Los Angeles, State of California, conveyed to the United States of America the hereinafter-described tract of land for the use of the War or Navy Departments; and

Whereas the county of Los Angeles, in the State of California, purchased said property for the purpose of making said conveyance at a total sum of $148,655, of which amount the United States of America contributed $55,655 and the county of Los Angeles contributed the sum of $93,000; and

Whereas the United States of America has ceased to use said property, or any part thereof, for military or naval or other purposes, and the same is now and for some time has been idle: Therefore

Be it enacted, etc., That the Secretary of War be, and he is hereby, authorized and directed to convey to the county of Los Angeles the hereinafter-described land, exclusive of such structures thereon which may be designated by the Secretary of War for retention by the War Department with a view to their eventual removal from the premises, to be used for public-park, playground, and recreation purposes only, on condition that should the land not be used for that purpose it shall revert to the